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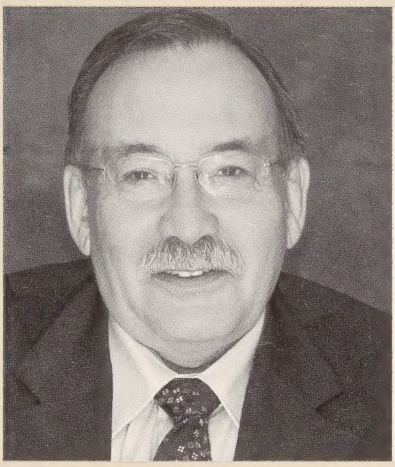

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CANADA

AND ITS PROVINCES

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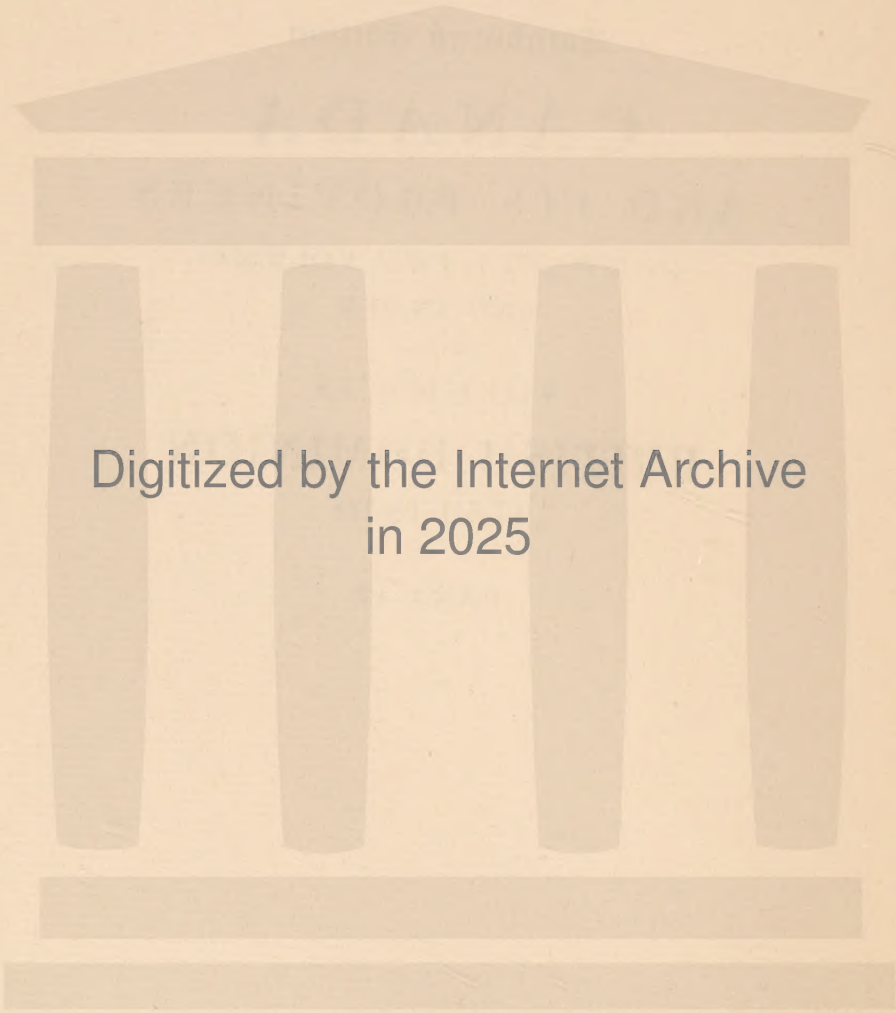
AND INDEX

VOLUME IV

BRITISH DOMINION

1760-1840

PART II



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CANADA
AND ITS PROVINCES

A HISTORY OF THE CANADIAN
PEOPLE AND THEIR INSTITUTIONS
BY ONE HUNDRED ASSOCIATES

GENERAL EDITORS: ADAM SHORTT
AND ARTHUR G. DOUGHTY

VOLUME IV

BRITISH DOMINION
1760-1840

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LORD DURHAM AND THE UNION OF THE CANADAS

LORD DURHAM AND THE UNION OF THE CANADAS

Lord Durham's Mission

THE report of armed rebellion in the Canadas brought the British government to a realization of the seriousness of the situation and of the necessity of grappling firmly with the problem of Canadian government. The accounts of the rebellion reached Britain just before the adjournment of parliament for the Christmas vacation, so that during the recess the government was given time to formulate its Canadian policy. It was decided temporarily to suspend the constitution of Lower Canada and to appoint a commission to conduct a searching inquiry into the actual grievances of the province with a view to suggesting a final solution for the problem. Accordingly, on the assembling of parliament on January 16, 1838, Lord John Russell introduced into the House of Commons a bill making temporary provision for the government of Lower Canada. The constitution of the province was suspended from the date of the proclamation of the act until November 1, 1842. The government during this period, reverting to the system in vogue prior to 1791, was to consist of a governor and Special Council appointed by the crown. Legislation was to be initiated by the governor, while the council was not permitted to pass laws imposing new taxes or effecting constitutional changes. A limit was set to the period of the operation of the laws of the Special Council, and provision was made for the review of its laws by the British parliament.[1]

[1] For a more complete description of the constitution of the Special Council see p. 486.

For the very responsible position of special commissioner to the Canadas, Lord Durham was selected by Palmerston. Durham, though one of the younger men of the party, was recognized as a man of commanding strength—too strong, in fact, for the comfort of certain members of the ministry. He had only recently completed a most successful mission to Russia, and was now a free lance in British public life. During the previous summer he had been urged by Palmerston to take the Canadian post, but had declined. Now that a crisis had been reached the request was renewed, and it was only after great pressure had been brought to bear upon him that he accepted the mission, on the day of the introduction of the Canada Bill. There were special political reasons which made Durham's appointment desirable. The Canada Bill proposed coercive measures which were certain to be bitterly opposed by the radicals in parliament, and Durham's known radical tendencies would tend to make the mission acceptable to those who regarded it with suspicion. Lord Durham was the one outstanding man who could command the confidence of all shades of opinion in parliament.

Lord Durham was vested with more extensive powers than had ever been held by a representative of the crown in British North America. He was clothed with a threefold power. He was governor-in-chief of the five provinces of Upper Canada, Lower Canada, New Brunswick, Nova Scotia and Prince Edward Island. In addition, he was given a special commission as high commissioner for the adjustment of certain important questions 'depending in the said provinces of Lower and Upper Canada, respecting the form and future government of the said provinces.' To this end he was therefore appointed 'High Commissioner and Governor General of all Her Majesty's provinces on the continent of North America, and of the islands of Prince Edward and Newfoundland.' The extensive authority conferred on Lord Durham is but an evidence of the seriousness with which the Canadian situation was regarded, and of the determination of the government to evolve a plan of salvation which, if necessary, should include all the North American colonies. In addition to the formal instructions—differing but slightly

from those previously issued—as governor-in-chief over each of the provinces, Lord Durham was furnished with letters from Lord Glenelg conveying the directions of the Colonial Office. The first of Lord Glenelg's letters, dated January 20, 1838, mentions as subjects for investigation the anti-commercial spirit of the House of Assembly of Lower Canada, the financial disputes between the two provinces and the constitution of the legislative council of Lower Canada. In order to avoid 'giving any just grounds for complaints, not unreasonably made on former occasions, against attempting legislative changes affecting Canada, without previously ascertaining the sentiments and wishes of those whom such changes principally concern,' Lord Glenelg suggested the assembling of a committee representing the two provinces for the discussion of the question of grievances. This committee was to be composed of ten representatives from the assembly of Upper Canada, three from the council, three appointed from the council of Lower Canada and two elected by each of the five districts of the lower province. The lieutenant-governors were instructed to afford such information as Lord Durham desired and to obey the directions which he should give. No attempt was made to outline the principles on which a solution of the Canada problem should be sought. 'I wish therefore especially to press it on your attention, that, in the preparation of any plan to be submitted to Parliament, the first object should be to ensure every probability of its practical efficiency.' The series of instructions to Lord Durham closed with the most positive assurance of the 'utmost support and assistance' of Her Majesty's government.

The selection of Lord Durham's staff created much discussion in England. Charles Buller, who had received his early training from Thomas Carlyle, was appointed chief secretary. Though a member of parliament since 1830, Buller was personally unknown to Durham until the summer of 1837, and even at the time of his appointment was but slightly acquainted with his future chief. Thomas Turton, who had gained notoriety from proceedings in the divorce court, was offered a position by Durham on the recommendation of

Stanley, but the Colonial Office refused to assume responsibility for the appointment. Turton accompanied Durham, and was later attached to the mission as legal adviser. Objection was also taken to the appointment of Gibbon Wakefield, who joined Durham's staff in a private capacity.

Lord Durham was not prepared to depart for Canada until near the end of April, and the delay was fatal to the political success of his mission. 'The delay,' wrote Buller, 'took off the bloom of the mission; the insurrection was to all appearance wholly suppressed before we started; the danger began to be thought less urgent; and the general impression of the necessity for great powers and unusual measures was gradually weakened.'[1] Lord Durham with his party—consisting in all of twenty-two persons—finally arrived at Quebec on May 27. The act suspending the constitution had been brought into effect on March 27, and on April 2 Sir John Colborne selected his Special Council, consisting of twenty-two members. Of Colborne's Special Council two members, C. E. de Lery and James Stuart, belonged to the executive council, while eight were members of the legislative council. Lord Durham decided to preserve an absolutely free and independent course and to avoid entanglements with any of the factions connected with the recent disturbances. He therefore found it necessary to dispense with the services of the existing executive council—every member of which had in one way or another antagonized some section of the community. The new council was composed of Dominique Daly, the provincial secretary, whom Colborne had recommended as the only unexceptionable member of the provincial service, R. I. Routh, the commissary-general, and Durham's three secretaries, Buller, Cowper and Turton. The duties of the council, however, were to be confined within the narrowest constitutional limits.

Lord Durham's reception was as cordial as could be expected under the circumstances. The magnificence of his establishment, which he well knew how to employ to advantage, had impressed the French Canadians with the power and majesty of the new governor. His dismissal of the

[1] Charles Buller, *Sketch of Lord Durham's Mission to Canada in 1838.*

executive council stamped him at once as a man of strength and independent judgment. The mass of French Canadians rejoiced in the overthrow of the arch-enemy, the executive council, while the moderate British element saw in Durham's decisive measures the promise of the restoration of tranquillity and the resumption of commerce and industry. Only the British bureaucracy, whose personal interests were affected, were inclined to grumble ; but Lord Durham could well afford to arouse their opposition.

Practical Problems

Lord Durham's first problem, one which he had not anticipated, was of a most delicate and dangerous nature. The extreme measures of punishment adopted by the Family Compact, through the instrumentality of Sir George Arthur, aroused a popular clamour against the government of Upper Canada, while at the same time the bands of political exiles which hung about the border, in a state of desperation, were designing an invasion of the province. The border states were openly hostile to Britain and made no secret of aiding the rebels in their plans for overthrowing the government. The state governments abetted these hostile movements, while the federal government, desiring to profit by the popular wave of anglophobia, was at best indifferent. On the night of May 29, a band of marauding outlaws which, under the leadership of a desperado, Bill Johnson, infested the islands in the St Lawrence, set fire to a British steamer, the *Sir Robert Peel*, which had been caught in American waters. Shortly afterwards an American steamer, the *Telegraph*, was fired on by British sentries at Brockville. These events, occurring at a time when international relations were strained, brought the situation to a crisis. War between Britain and the United States promised disaster in Lower Canada and the possible loss of the colonies. The success of Durham's mission demanded, above all else, international peace. Accordingly, Colonel Charles Grey, Lady Durham's brother, was dispatched to Washington for the purpose of securing co-operation in maintaining peace on the international border. The

success of Grey's mission was complete, and within a short time the forces of the two nations were acting in concert in preserving order along the boundary. This was not the least difficult of Lord Durham's tasks, and it is to the credit both of Durham and of Grey that the mission was attended with such signal success.

Lord Durham's attention was now directed to the more immediate purposes of his mission. A commission was organized for the investigation of the management of the crown lands of the province, and placed under the nominal direction of Charles Buller, but in reality entrusted to Gibbon Wakefield. The necessity of providing for the hearing of trials in the Court of Appeal gave rise to an enlargement of the executive council. Accordingly, Chief Justice Sewell, Chief Justice Reid, Judge Panet, Judge Rolland and Judge Vallières de St Réal were added to the council.

The Ordinance of June 28

The disposition of the political prisoners had still to be determined. Colborne's timidity left this most vexed problem for Durham's solution, and the delay had not improved the situation. Several courses were possible. The prisoners might be tried before a jury, but with the certainty of securing acquittal. The jury law might be altered or the juries packed in order to secure a conviction. But those courses were all subject to serious objections. In any case, the public discussion of incidents which it was desirable should be forgotten was likely to have a most disturbing effect. The course which was finally adopted was to secure from the prisoners a confession of guilt and an expression of willingness to waive public trial. Thus throwing themselves on the mercy of Lord Durham, they were promised lenient treatment. The agreement was signed by Robert Bouchette, Wolfred Nelson and other prisoners on June 26, and two days later the Special Council was reconstituted for the purpose of confirming the ordinance necessary to complete the agreement. The act constituting the Special Council fixed five as a quorum, and Durham appointed Vice-Admiral Sir Charles Paget, Major-

General Sir James Macdonnell, and Grey, Cowper and Buller of his own staff. On the day of the coronation of Queen Victoria, an ordinance was passed banishing to Bermuda Nelson and his seven fellow prisoners who signed the petition, exiling Papineau and fifteen of his fellow deserters, and extending amnesty to all the remaining prisoners. None of the fugitives were permitted to return on pain of death, while the governor was given power to suspend the punishment of any one of those affected by the ordinance.

Durham's disposal of the prisoners was a very clever piece of political manipulation. The forms of judicial proceeding were followed and substantial justice was done to all parties—except perhaps the colony of Bermuda. The effect of the ordinance and proclamation in Canada was more gratifying than had been anticipated. The British party was satisfied that the public security would not be endangered, while French Canada was impressed with the lenity of the measure. Nevertheless, on July 4, a meeting of French-Canadian extremists was held at St Roch to protest against the treatment of their compatriots. Of still greater importance, it definitely and decisively turned the tide of anglophobia in the United States. 'From that hour,' wrote Buller, 'the disaffected in Canada ceased to derive any aid from the public opinion of our neighbours, and among our difficulties we had no longer to contend with the chance of war with the United States.'[1]

On the occasion of the first meeting of the council, ordinances were passed establishing police forces in Montreal and Quebec. On July 4, Durham and his party left for Montreal, where he received a most enthusiastic greeting. The party then proceeded to the upper province, and arrived at Niagara on the 13th. The visit to Niagara was seized by Lord Durham as a fitting occasion to manifest his friendship for the United States. On the 17th a review of the forces was held in the presence of the officers of the staff and the civil and military authorities of Upper Canada. Such a military demonstration had never before been witnessed in the province, and its effect

[1] *Sketch of Lord Durham's Mission to Canada in 1838.*

on the numerous American citizens present was a distinct factor in producing more cordial relations. In the evening Lord Durham's hospitality was extended to the Americans in a public dinner at Niagara. His lavish expenditure, which occasioned severe criticism, Buller defended as a wise investment. 'I have often said to those who (after the fashion of petty carping, by which we were assailed) used to dilate on the seven or eight hundred pounds that were spent in the course of Lord Durham's visit to Niagara as a monstrous expense, that, considering the results attributed to it, a million of money would have been a cheap price for the single glass of wine which Lord Durham drank to the health of the American President.'

Further commissions were issued for the purpose of securing reliable information on Canadian subjects. In July Arthur Buller—brother of Charles—was appointed to collect information on the question of education. William Kennedy and Adam Thom were entrusted with the investigation of the municipal institutions of the province. Thom's appointment is an excellent example of Durham's method of securing assistance. As editor of the Montreal *Herald* Thom wielded over the British community a powerful influence which was not at all times favourable to Lord Durham. He was a man of decided talent, and was possessed of a mine of local information which was of value to the mission. The appointment, though it aroused suspicion among the French Canadians, annexed the support of a man whose power of criticism deserved consideration.

The question of the future government of the Canadas was now to receive Durham's attention. Lord Glenelg's plan of assembling a committee composed of representatives of the two provinces was quite impossible. An election of delegates was not desirable, and, in any event, little could be expected from a conference consisting of tory zealots from Upper Canada and the representatives elected by the counties of Lower Canada. Durham, therefore, followed his own judgment and invited deputations from the Maritime Provinces to a conference at Quebec to discuss union.

Durham and Union

The federal union of the Canadian provinces had already been suggested in Britain and met with distinct support. This scheme therefore served as a basis for the discussions. The plan was coupled with a new division of the Canadian provinces. The central and western portions of Upper Canada were to constitute a separate province. Eastern Upper Canada, Montreal and the Eastern Townships of Lower Canada were likewise to be erected into a province, while the remainder of Lower Canada was to form a third province. The object of this rearrangement was to neutralize French influence. Montreal was the centre of the disaffected French. By flanking it with two large and rapidly increasing British settlements, French influence would be rendered nugatory. The French of Quebec and the eastern districts were comparatively peaceable and, separated from their more boisterous fellows, could be entrusted with their own government. Many advantages commended the union scheme to Lord Durham. 'The plan appeared to offer a chance of putting an end to existing discussions, of overwhelming the enemies of British connexion in the Canadas by the unanimous loyalty of the Lower Provinces, of extinguishing the pretensions of French nationality, and at the same time of leaving each different community in possession of its own laws and of the power of managing its own local affairs.' In addition it served to unite the colonies in self-defence and in the development of their rich resources, thus 'raising up on the northern frontier of the United States a rival union of British colonies, which might ere long . . . form a counterbalancing power on the American continent.'[1]

Objections to this scheme soon developed. The consent of French Canada could not be secured to such a proposal of national suicide. New Brunswick had only recently successfully passed through a serious constitutional crisis and was in no wise inclined to enter on further political adventure. It became obvious that the federal scheme would have to be abandoned, and gradually the proposal of a legislative

[1] Charles Buller, *Sketch of Lord Durham's Mission to Canada in 1838.*

union of the two provinces contained in the report was elaborated.

Disallowance of the Ordinance

Lord Durham's relations with Lord Melbourne had not been of the happiest. The appointment of Turton and the association of Wakefield's name with the mission added to Melbourne's troubles in parliament. But the final thrust was the disallowance of Durham's Ordinance of June 28. In the House of Lords an attack was made on the ordinance by Lord Brougham, who was actuated by personal bitterness, and by Lord Ellenborough. The main argument was that Durham had exceeded the powers of his commission in banishing prisoners to Bermuda and in threatening them with capital punishment should they return. The method by which Nelson's statement was secured, the meeting of the Special Council, the three readings at a single sitting, were all subjected to criticism. Brougham's ground was well chosen, and united both radicals and tories against the government. Durham's defence by Glenelg and Melbourne was weak and half-hearted, and only in the Commons, where Lord John Russell entered the lists, was any genuine attempt made to justify Lord Durham. Brougham proposed a bill of indemnity, which was accepted by Melbourne, and on the advice of the ministry the ordinance was disallowed. It must be admitted that it was very difficult to justify Durham's ordinance on legal grounds, but if the government had appealed to the generosity of the house, and had called upon patriotic grounds for the support of Durham, the legal difficulties might have been overcome by legislation.

Melbourne's betrayal of Lord Durham is utterly unpardonable. If the offer of the Canadian mission to Durham were a scheme to liberate the ministers from a dangerous antagonist or a formidable rival, time has avenged Melbourne's Machiavellian treachery. If the prime minister were honest and sincere in his appointment of Lord Durham, it was his duty to afford him every assistance within the power of the government. In minor details Lord Durham may have exceeded the powers of his office, but his conduct most assuredly

permitted of defence. The peculiar character of the situation demanded exceptional treatment. A problem had arisen of which every strictly constitutional solution was open to serious objection. Lord Durham, by his exercise of the prerogative, obtained an agreement, considered at the time thoroughly satisfactory, and trusted to the sound judgment of those who had sent him to effect its ratification. Had he sentenced the prisoners to a penal colony his act would have been entirely constitutional, but for his humanity and consideration of the interests of the prisoners he was condemned. It was unfortunate that in reporting the passing of the ordinance a detailed explanation of the situation which had produced it was not given. The situation was one which required special defence, and it is regrettable that the most complete information had not been afforded to the ministry.

The news of the disallowance of the ordinance came to Lord Durham as a bolt from the blue. 'He had received a bag with letters and despatches from England containing an account of the *reception* of the Ordinances, with private letters from Melbourne, Lord Glenelg and others, rejoicing over the manner in which the difficult affair of the Prisoners had been settled, and bidding him "go on and prosper" with other expressions of unqualified approbation. There was also a letter from the Queen to me, in answer to those we had written on her Coronation day expressing her thanks and her satisfaction at all that was going on.'[1] The conviction that he had been ruthlessly betrayed, that the great work on which he had set his heart had been wantonly destroyed, overcame him with grief and despair. Deserted by his friends and discredited before those amongst whom his duties were to be performed, no alternative seemed open but resignation. His decision to resign was made at once, and in it he persisted despite the protests of Buller. His secretary advocated a much more daring scheme. Although his chances of success were greatly diminished, still his determination to bring the issue to a successful close might well, in Buller's opinion, have overcome even these new obstacles. Ultimate success would justify his refusal to regard seriously the censure of his

[1] Lady Durham's *Journal*.

colleagues. But other reasons weighed heavily in Durham's view. His health had been undermined, and he felt unequal to such a herculean task.

Durham's Return

The news of the disallowance of the ordinance caused consternation throughout the lower province. The extremists of the French-Canadian party secretly rejoiced at this rebuff to Durham, and entered with renewed energy into plans for insurrection. The British press condemned the action of the ministry in unmeasured terms. The ultra-British element was carried to an inordinate excess in its denunciation of the treachery of Melbourne. Addresses poured in from all sections of the British inhabitants of both provinces. But the mass of the French Canadians remained impassive and refused to be drawn into any demonstrations.

Having determined to resign, Durham, on October 9, issued a proclamation designed to vindicate his conduct before the people of Canada and to calm any agitation which the peculiar circumstances of his departure might be inclined to occasion. The purpose and the result of this action is set forth by Lady Durham. 'His aim was directed to turn their attention towards England, to inspire fresh hopes that his presence and earnest representations, with the faithful report of the state of the country, would at last be met with consideration and produce a change in the system of government of the Colony. . . . Far, however, from inflaming the minds of the People, the Proclamation had, as was intended, the effect of soothing and allaying the irritation and ill feeling which prevailed by directing their views to the expectation of a last effort in England.'[1] The remaining administrative details were completed in October, and on November 1 Lord Durham set sail for England.

It is difficult to estimate the immediate results of Durham's mission. The rebellion had been suppressed before he arrived, but the most difficult of the problems raised by the rebellion—the disposition of the prisoners—still remained. Had Durham

[1] Lady Durham's *Journal.*

been granted the support he deserved there is every reason to believe that the restoration of the prisoners could have been accomplished with no risk to the province. His dealings with the United States had been pre-eminently successful, at a time when failure would have endangered the integrity of the Empire. The administration of the government during the period of his actual term of office was satisfactory. His independence and superiority to party inspired confidence in his administration. The basis was laid for the preparation of his report, that classic production on the subject of colonial government. Information was brought together which proved of invaluable aid in the solution of the problems of the province. But with French Canada Lord Durham had never been on terms of cordiality. He did not understand French character, and his efforts at conciliation resulted in failure. In his dealings with La Fontaine and Viger he had been unfortunate and was believed to be prejudiced against them. That he did not do justice to French Canada was manifested in his coercive scheme of federal union. What would have resulted had Durham been allowed to remain is only conjecture. The movement of dissension among the French Canadians was growing, and unless some step of conciliation were taken Durham's mission might well have been embarrassed by a second revolt.

Durham reached England on the last day of November, and was soon busy on the preparation of his report. It is now generally conceded that there is no real question as to the authorship of this document. Rumours were circulated by enemies of Durham detracting from his credit in the preparation of the work. It is certain that Durham used his secretaries in the collection of the material on which the report is based. But its plan and the general principles of government stated are unquestionably the contribution of Durham himself. The Canadian situation had been thoroughly discussed with the Bullers, Wakefield, Turton, Thom, and each undoubtedly contributed to the formation of the opinions expressed in the report ; but the personality speaking through the document is Lord Durham's.

Durham's Report

Lord Durham's Report contained a detailed survey of the causes contributing to the breakdown of the constitution in each of the provinces. His analysis of the political situation was clear and accurate, and his conclusions based on a thorough familiarity with Canadian conditions. Two main positive recommendations were made—the introduction of responsible government and the union of the Canadas under a single government.

Lord Durham approached the question of colonial government as a liberal and a radical. He saw clearly the necessity of establishing harmony between the executive and legislative branches of government. Governments would never express the will of the people until made responsible to the people; and the means of enforcing responsibility he found in the British system of government by a council selected by the majority of the popular assembly. He met the traditional conception of the essential contradiction between colonial self-government and the unity of the Empire by discriminating between matters of colonial and imperial concern. Under imperial interests he classified the determination of the constitution of government, the regulation of commerce and of foreign relations, and the disposal of the public lands. Responsible government, therefore, limited to the sphere of purely colonial concerns, could not endanger the stability of the Empire. The British system of parliamentary government recognized certain constitutional checks. Similarly, in Canada the legislative council was to be reconstituted so as to act as a check on the popular assembly. The control of public lands was to be retained by the imperial parliament, while all the other crown revenues were to be surrendered to the assembly in return for a permanent civil list. In fine, he advocated the British system of responsible government in the management of purely colonial affairs.

Local municipal government, in Durham's view, bore an important relationship to general government. The absence of adequate municipal institutions in Lower Canada in particular attracted Lord Durham's attention. 'A general

legislature, which manages the private business of every parish, in addition to the common business of the country, wields a power which no single body, however popular in its constitution, ought to have ; a power which must be destructive of any constitutional balance.' By the establishment of an adequate system of local government the general government was to be relieved of those matters which were not its proper concern. In addition, by participating in the responsibilities of local government, citizens would secure a training which would fit them for the better discharge of the duties of general administration.

Now that the principle upon which the Canadian problem was to be solved had been determined, Lord Durham directed attention to its application to the actual situation. In order to render possible the introduction of responsible government, the Canadas were to be united into a single province with one legislature. Union was a necessary condition to the granting of responsible government. Were it possible to conceive the same problem presented with Lower Canada English, instead of French, Lord Durham's recommendation would have been the same. But the French character of Lower Canada made it even more necessary that a union should be consummated. The two provinces were to be consolidated with the definite purpose of submerging French-Canadian nationality. Canada's relation to the Empire demanded that its national character should be that of the Empire. 'I repeat that the alteration of the character of the province ought to be immediately entered on, and firmly, though cautiously, followed up ; that in any plan which may be adopted for the future management of Lower Canada, the first object ought to be that of making it an English province ; and that, with this end in view, the ascendency should never again be placed in any hands but those of an English population.'

As a means of anglicizing French Canada, Lord Durham advocated the gradual substitution of the English for the French language. The hostilities and animosities of race which Lord Durham had found in Lower Canada were aggravated and perpetuated by difference of language. The language problem he would solve by encouraging the

use of English. 'A considerable time must, of course, elapse before the change of a language can spread over a whole people ; and justice and policy alike require that, while the people continue to use the French language, their government should take no such means to force the English language upon them as would, in fact, deprive the great mass of the community of the protection of the laws.' Community of language was to be the necessary condition of community of institutions of government in a common empire.

The union which Lord Durham advocated was a real union of peoples and not a mere amalgamation of the Houses of Assembly. Representation in the new assembly was to be determined by a parliamentary commission on the basis of representation by population. The principle of equal provincial representation was definitely discarded. It is difficult to conceive how Lord Durham failed to see that the adoption of the principle of representation by population would defeat the scheme of English domination in the popular assembly. On the basis of population French Canada was certain to be the first partner in the union for many years to come.

The bold and unequivocal advocacy of the principles of coercion strikes a seemingly discordant note in Lord Durham's Report and seems inconsistent with his professions of liberalism. Nevertheless, coercion was given a definite place in Lord Durham's scheme of liberalism. To him it appeared as a necessary means to securing the fundamental principle of liberalism—responsible government. Coercion ceased to be coercion when practised for the sake of responsible government. Moreover, in Lower Canada the French language had been the instrument of a most reactionary conservatism, and in planning for its destruction Durham was consistent with his liberalism. But Lord Durham was an imperialist as well as a liberal. It was to the interest of French Canada to become assimilated within the larger imperial order. But imperialism to Durham permitted of no diversity of nationality. The benefit of the Empire and of French Canada as well required that English domination should be asserted.

The great merit of Lord Durham's Report is his brilliant

exposition of the principles of colonial self-government. The responsibility to crown and people—to the tory of his time a fundamental contradiction—was happily reconciled by his division of the functions of government. Responsibility to the people in issues of colonial concern was demonstrated to be compatible with responsibility to the crown in imperial interests. Imperialism was thus far placed on a sound moral basis—the right of self-government. The vulnerable point in Lord Durham's Report was his treatment of nationalism. He failed to realize the permanence and virtue of nationalism. The situation in French Louisiana or in Dutch New York did not afford a parallel to French-Canadian nationalism—a most conservative and uncompromising variety of nationalism. Durham's positions on responsible government and nationalism were essentially inconsistent. His error arose from treating as fundamental that which is secondary and derivative, and as secondary that which is fundamental. Nationalism is the prior consideration. Responsible government is an instrument of nationalism. Papineau's position and Durham's afford an instructive contrast. Papineau accepted responsible government as a means to secure nationalism ; Lord Durham submerged nationalism in order to secure responsible government.

Lord Durham's Report was bitterly attacked by the two wings of conservatism—the Family Compact and French-Canadian Nationalism. The Compact resented Lord Durham's criticisms of its political methods and took alarm at the proposed invasions of its prerogative. French Canadians, as was to be expected, resented keenly the open attack on their nationality. On the other hand, the constitutional reformers in both Upper and Lower Canada hailed the report with delight, and awaited with eagerness the dawn of a new day.

Lord Durham's Report presented the theory of responsible government as applied to colonial legislatures. Practical difficulties and the conflict of splendid theoretical principles with the reality of actual conditions had to be solved. This more tedious and infinitely harder task remained for the statesmanship of Lord John Russell and Poulett Thomson.

On Lord Durham's departure from Canada, the government again passed into the hands of Sir John Colborne. Colborne's firmness removed any danger from the insurrections which threatened at the time of the announcement of the disallowance of the ordinances. The retirement of Lord Durham and the temporary stilling of the troubled waters gave an opportunity for Canadian opinion to crystallize and settle into definite form. The British element in Lower Canada was zealously in favour of union, while the Constitutional Associations of Quebec and Montreal undertook to promote a campaign on its behalf. Union delegates were sent to Britain to influence opinion, and the Hon. George Moffat was given a similar mission to Upper Canada. In Upper Canada the situation was different. While the great mass of the people saw in union the prospect of commercial expansion, the scheme was bitterly opposed by the Compact on narrow and selfish political grounds. They did not propose voluntarily surrendering their vested rights in government for the doubtful advantage which the larger field of united Canada would afford. Only on the impossible condition of preserving its own influence in government was the Compact prepared for union. A scheme of British North American federation appealed with more force to the Compact party in that it guaranteed the supremacy of British interests and counteracted the vulgar democracy of the Canadas by introducing a loyal and aristocratic representation from the Maritime Provinces. Every shade of opinion, in fact, was represented by the Canadian factions—and British Upper Canada represented the extremes. The Upper Canadian reformers accepted both union and responsible government; the French of Lower Canada favoured responsible government but bitterly opposed union; the British element in the lower province favoured union but opposed responsible government, whereas the Compact was opposed to union and responsible government alike.

POULETT THOMSON

Early in June 1839 the Canadian question was introduced in the British parliament by Lord John Russell, who, a short

time before, had succeeded to the Colonial Office, and a bill was introduced for 're-uniting the Provinces of Upper and Lower Canada and for the Government of the United Provinces.' This tentative proposal, which in addition to uniting the provinces contained a scheme of local government, was designed simply to bring the discussions to a definite issue and to permit an expression of opinion in the Canadian provinces. At the same time a successor to Lord Durham was found in Poulett Thomson—until recently president of the Board of Trade. In 1830 Thomson took office under Lord Auckland as vice-president of the Board of Trade, and four years later succeeded to the presidency with a seat in the cabinet. Thomson as a successful man of business was a master of the questions of public finance and was known to have decided free trade proclivities. In fact, after the death of Huskisson, Thomson was regarded as the leading exponent of the new commercial heresies. Early in May, Lord Melbourne resigned only to return to office in a few days on Peel's inability to form a cabinet. A reconstruction of the ministry was necessary. Lord Glenelg gave way to Lord John Russell, and Thomson was offered the choice of the chancellorship of the exchequer or the government of Canada. The exchequer, as he himself confessed, had become disagreeable to him. 'All that can be hoped is to get through some *bad* tax. There is no chance of carrying the House with one for any great commercial reforms, *timber*, *corn*, *sugar*, etc.' The greatness of the field and the privilege of grappling with a problem which had defied every attempted solution turned the balance in favour of the Canadian post.

Although armed with a more limited commission, Poulett Thomson was entrusted with greater powers than had been given to Lord Durham. As a former member of the cabinet he was thoroughly familiar with the ministry's views on the Canadian question. As the intimate personal friend of Russell he was assured of the most complete confidence and support. The legislative union of the provinces, the settlement of a permanent civil list to include the salaries of the judges and the chief executive officers, and the introduction of local government, were the principles which he was expected

to adopt. The question of responsible government was kept in the background as an issue on which a definite statement of policy could not be made in advance. Its application depended on the particular conditions of the time. In general, however, the principle was accepted that the executive council should consist of persons commanding the confidence of the majority of the House of Assembly. The constitution of the Special Council was revised so as to render it of greater assistance to the new governor, and instructions were given to Sir George Arthur to carry out whatever policies might be applied by Thomson.

On his arrival in Canada the new governor was confronted with a distinctly unfavourable prejudice. His advocacy of free trade and his personal interest in the Baltic timber trade alarmed the Canadian merchants. By the French Canadians he was feared as an advocate of union, while the Compact party were suspicious of his liberal views on responsible government. Thomson soon allayed their prejudices, and by his determination and industry in acquiring a command of the local situation won the confidence of all but the bitterly hostile.

Thomson's Problem

The duty required of Thomson was nothing less than the revolutionizing of the Canadian organization of government. The union of the provinces could be accomplished by mere act of parliament after the consent of the provinces had been obtained. Not so the introduction of responsible government. A special training in government and a peculiar political attitude of mind hitherto foreign to Canadian conditions were necessary to the operation of responsible government.

As has been seen, responsible government was not the essential demand of French Canada at the time of the rebellion. It was only in the final stages of the movement, and then rather to enlist British sympathy than from a logical appreciation of its operation, that the claim for responsible government was adopted by the assembly of Lower Canada. Even then an elective legislative council seemed to offer a more direct means of controlling the executive. In Upper Canada, while

the demand for responsible government was conscious and deliberate, its real significance was not understood by the reformers. Responsible government involved a discussion of the fundamental relation between the colony and the motherland which had never entered the minds of the reformers of either province. Lord Durham, indeed, had stated the theoretical division of authority, but had neglected to take into account the inevitable conflict which in actual practice would arise between colonial and imperial interests. A clear-cut and definite distinction such as Durham attempted was practically impossible. The same questions affected both colonial and imperial interests ; colonial interests were imperial and imperial interests were colonial. Into a consideration of this conflict of interest in its relation to responsible government Canadian reformers had never thought to enter.

Likewise no serious thought had ever been given to the question of the practical working of responsible government. The cabinet system based on party organization found no counterpart in Canada. In Lower Canada party could hardly be said to exist. In Upper Canada there was a broad distinction between reformers and conservatives, but a party capable of pursuing a consistent line of policy had no existence. The only issue on which a definite community of action could be secured was responsible government—as then understood. But responsible government as a single political issue was only an instrument of self-destruction. When responsible government became an active principle of administration it ceased to be a basis of party unity, and, with the disruption of party, responsible government fell. Owing to the loose structure of party in Upper Canada, the operation of responsible government was impossible.

But the existence of a party did not complete the machinery of responsible government. A committee was necessary to give effect to the popular will in the actual administration of government. The organization of a cabinet was Thomson's next task. The chief executive officers were to be organized into a working unit bound together by a political policy commanding the support of the majority

of the popular assembly. Unity and consistency of policy could be maintained only on the basis of a broad spirit of compromise on the part of each member of the committee. From the crude materials at hand Thomson was required to complete the machinery of responsible government by the construction of a cabinet council.

But further, the existing powers of government were opposed to the introduction of responsibility. In Lower Canada the suspension of the constitution and Durham's dismissal of the councils had done much to clear the ground. Colborne's Special Council had been restored, but it was not a serious factor in government. In Upper Canada, however, active and determined resistance was to be expected from the Family Compact. The vested interest of the members of the Compact party in the government of Upper Canada had to be removed as an essential condition of reform.

Responsible Government

In the introduction of responsible government Thomson's task was threefold. He was required to define the principle of responsible government in its application to a colonial dependency. It next became necessary to create the machinery for the operation of responsible government—a process which involved the destruction of the existing system and the removal of the débris. And finally it became his duty to undertake the operation of the new machinery until such time as it could carry itself forward of its own accord.

In defining the character and limits of responsible government, Thomson was fortunate in being able to derive inspiration from the genius of Lord John Russell. Two of Russell's letters, dated October 14 and 16, 1839, contained a clear statement of the issue as applied to the possibility of conflicting authority.

> It may happen, therefore, that the governor receives at one and the same time instructions from the queen and advice from his executive council, totally at variance with each other. If he is to obey his instructions from England, the parallel of constitutional responsibility entirely fails ; if, on the other hand, he is to follow the

> advice of his council, he is no longer a subordinate officer, but an independent sovereign. . . . Every political constitution in which different bodies share the supreme power is only able to exist by the forbearance of those among whom this power is distributed. In this respect the example of England may well be imitated. The sovereign using the prerogative of the crown to the utmost extent, and the House of Commons exerting its power of the purse to carry all its resolutions into immediate effect, would produce confusion in the country in a twelvemonth. So in a colony; the governor thwarting every legitimate proposition of the Assembly, and the Assembly continually recurring to its power of refusing supplies, can but disturb all political relations, embarrass trade and retard the prosperity of the people. Each must exercise a wise moderation. The governor must only oppose the wishes of the Assembly where the honour of the Crown or the interests of the empire are deeply concerned; and the Assembly must be ready to modify some of its measures for the sake of harmony, and from a reverent attachment to the authority of Great Britain.

The success of responsible government was made to depend on a non-constitutional element—the spirit of mutual confidence in which it should be administered.

Lord John Russell's first dispatch defined the relation between the governor and the assembly in a system of responsible government. Directions were now to be given on the relation between the executive council and the popular assembly on the one hand, and the governor on the other. Lord John Russell's second dispatch was concerned with the tenure of executive office.

> You will understand and will cause it to be made generally known, that hereafter the tenure of colonial offices held during Her Majesty's pleasure will not be regarded as equivalent to a tenure during good behaviour; but that only such officers will be called upon to retire from the public service as often as any sufficient motives of public policy may suggest the expediency of that measure, but that a change in the person of the governor will be considered as a sufficient reason for any alterations

> which his successor may deem it expedient to make in the list of public functionaries, subject, of course, to the future confirmation of the sovereign.

Through the instrumentality of a governor acting in sympathy with the popular will, the responsibility of the executive officers to the crown was converted into a responsibility to the people.

An Advocate of Union

But the immediate problem was that of union. In November 1839 Thomson called together the Special Council of the province and submitted his proposals of union. Despite the opposition of John Neilson, resolutions approving the basis of union were passed. The council's terms included the provision for a permanent civil list, the preservation of the constitutional rights of the two provinces and the improvement of the St Lawrence by the united efforts of the provinces. The complete change in the conduct of Neilson was a result of the excesses of the rebellion. In the early years of the reform movement he had been its prophet. But the conduct of Papineau and his compatriots had shaken Neilson's confidence in responsible government. His support had been based on theoretical considerations, which the practical issue demonstrated to be groundless. Immediately preceding the rebellion and during its progress he had acted with the moderate British constitutionalists. But he was gradually moving towards conservatism, and his opposition to the union proposals was based, not on union itself, but on the consequent introduction of responsible government—the principle for which he had formerly contended.

Thomson's next move was to get Upper Canada in line for union, and accordingly he set out to meet the assembly which was called for December 3. Under the influence of the Compact party, and, supposedly, in the interests of British connection, Sir George Arthur had taken a strong position in opposition both to the union and to the introduction of responsible government. A very embarrassing situation was now created. If the lieutenant-governor were to be of

practical assistance to Thomson in carrying out the policy of the British government, he must be prepared to act in contradiction to his past declarations. Arthur realized fully the force of the situation, and, after making a frank confession to Thomson, requested that he be not required to stultify himself by too glaring inconsistencies.

The situation in Upper Canada was in many respects more serious than in Lower Canada. The province was hopelessly divided into factions. Financial and commercial depression aggravated the prevalent discontent, and the benefit of British connection was seriously questioned. The province was insolvent and witnessed an annual deficit in excess of the income. 'From all that I can hear or see, I would not give a year's purchase for our hold of it, if some great stroke is not given which shall turn men's thoughts from the channel in which they now run, and give a fresh impetus to public works, immigration, and the practical improvement of the country's resources.' The salvation of Upper Canada in Thomson's view depended on union.

In presenting the scheme of union to the assembly of Upper Canada, its terms were for the first time definitely stated. In order to secure British dominance in the united legislature, the province was granted a representation equal to that of Lower Canada. The stability of the executive government and the independence of the judges were to be secured by a permanent civil list. The debt incurred by Upper Canada on public improvements was to be assumed by the united provinces. The contest over the bill resolved itself into a struggle between Thomson and the Compact party. The governor was certain of the support of the reformers, and the influence of his powers of persuasion brought to his side many of the erstwhile moderate opponents of union. By a substantial majority the union proposals were sanctioned by both the council and assembly.

The looseness of party structure in Upper Canada compelled Thomson to take an active part in the union struggle and consolidate the floating factions of reform into a definite union party. He was compelled to become his own prime minister and assume the leadership of a political party. No

other course was open to him. Sir George Arthur had destroyed his own usefulness as an advocate of union and was glad to be excused from any connection with the issue. But the strange spectacle was presented of the virtual prime minister being opposed by his own attorney-general. The opposition to the union proposals in the assembly had in fact been led by Hagerman. Nothing could better demonstrate the necessity of a complete change before responsible government could be introduced. Thomson was impressed with the anomaly of the situation, and condoned such subversive principles only on the ground of the restraint which their previous conduct in opposition to union had placed upon the officers of government. From this time, however, Thomson began to organize his council on such a basis as would permit its conversion into a cabinet under a system of responsible government. Hagerman was appointed to the bench, Solicitor-General Draper succeeded him as attorney-general, and Robert Baldwin, the leader of the reform party, became solicitor-general.

Practical Reforms

Thomson's attention was now directed to removing the minor obstructions to union. The virtual suspension of the legislative function in each of the provinces for several years had produced administrative problems which demanded solution. It was most urgent that these issues should be settled before the consummation of the union, in order that the new government might be rendered as free as possible. Foremost among these questions was the clergy reserves. Amidst the rapid changes and transitions in Upper Canada the clergy reserves persisted in creating dissension and bitterness. Almost since the founding of the province the clergy reserves had continued to exert their baneful influence on the public life of Upper Canada, and in 1840 their power was undiminished. A provincial act of 1839 for the disposal of the reserves and the appropriation of their proceeds for religious purposes had been disallowed. Thomson was therefore compelled to consider the question from a very practical point of view. The influence of the Established

Church in the House of Lords set definite limits to the possible solutions. Thomson proposed that the reserves should be sold and that the annual proceeds of the revenue thus secured should be distributed for the purposes of religious instruction among the Church of England, the Church of Scotland and the other denominations having legal recognition in Upper Canada. Again Thomson was compelled to create his own party ; for a measure which satisfied the reform element as little as it did the clerical faction was in danger of being left completely destitute of support. He undertook the task, however, and from the moderate groups secured sufficient support to carry the bill through the two houses. The bill had still to run the gauntlet of the imperial parliament, and Bishop Strachan, the militant leader of the church, appealed to the clerical influence in the House of Lords. On constitutional grounds the bill was disallowed, but the situation was saved by the enactment of an imperial statute giving effect to the provisions of Thomson's settlement.

For Lower Canada also Thomson had a programme of reform necessary before the completion of the union. The system of judicature, which had remained practically unchanged since 1794,[1] had all but broken down. With the assistance of James Stuart, whom Durham shortly before his departure had made chief justice, a new judicial organization was completed and embodied in an ordinance of the Special Council.

The rôle which the clergy reserves played in Upper Canada was played by the registration question in the lower province. The English minority for many years had been advocating the establishment of a system by which titles to lands could be registered. The system of secret mortgages had rendered it almost impossible to secure a clear title to lands. Satisfactory measures of relief had been opposed by the anti-commercial and conservative majority in the assembly. The necessity of reform was now, however, admitted by the leaders of the French Canadians, and accordingly an ordinance prepared under Thomson's direction was passed by the Special Council.

[1] See p. 455.

Of much greater importance, however, was Thomson's organization of a system of local government for Lower Canada. He was heartily in accord with Lord Durham in the opinion that the establishment of municipal government was most essential to the reform of the provincial government.[1] 'Without a breakwater of this kind between the Central Government and the people, Government with an Assembly is impossible in Lower Canada, and most difficult in Upper Canada.' For this reason he insisted on including the organization of local government in his scheme of union. 'The establishment of Municipal Government by Act of Parliament is as much a part of the intended scheme of Government for the Canadas as the union of the two Legislatures, and the more important of the two. All chance of good Government, in Lower Canada especially, depends on its immediate adoption.' Thomson insisted on the imperial government undertaking the responsibility of passing the necessary legislation, because he saw no hope of securing an adequate measure from a provincial legislature. However, the municipal clauses of the Union Bill met with most strenuous opposition, and in order to save the main principles of the scheme Lord John Russell was compelled to surrender on the question of local government.

The compromise was keenly disappointing to Thomson, but other resources remained. The docile Special Council was employed to secure that necessary prelude to responsible government which the imperial parliament denied. An ordinance was passed giving the province of Lower Canada its first definite municipal organization.

Union

On July 23, 1840, the Union Bill became law, and Thomson, who, in recognition of his most distinguished services, had been created Baron Sydenham, declared February 10, 1841, as the date on which the union should have effect. The actual consummation of the union still demanded the determination of many important issues. The selection of a capital

[1] See p. 402.

was arousing lively interest. Quebec, Montreal, Ottawa, Kingston and Toronto were rival claimants. Quebec and Toronto were ruled out on account of their distance from the centre of the province. Ottawa was unable to provide proper accommodation for the government establishment, and the choice was confined to Kingston and Montreal. From the standpoint of defence—which was then a most important consideration—Kingston was considered to possess a distinct advantage. Likewise for political reasons Kingston was considered more suitable. Montreal had been known as the centre of sedition for many years, and there was no desire to expose an innocent legislature to such dangerous infection. The united province was to be British in character, and a salutary effect was anticipated from the intercourse of the French and English members of the assembly in the healthier social atmosphere of a British community.

The government of the united province, according to the Act of Union, consisted of a governor, a legislative council composed of not fewer than twenty members appointed by the crown and a legislative assembly elected in equal numbers by each province. English was made the official language of all legislative records. The revenues within the control of the two legislatures were combined in a consolidated revenue fund, which was made liable for a permanent annual allowance of £75,000 for certain specified salaries. In return for this civil list the crown surrendered control of the hereditary and territorial revenues. The Act of Union, therefore, embodied a settlement of outstanding issues which for a quarter of a century had spread dissension throughout the Canadian provinces. It promised to clear the slate of Canadian grievances and to permit Sydenham to introduce the system of responsible government unhampered by the fetters of previous misgovernment.

Colonial autonomy, supported by the guarantee of responsible government, was the practical solution of the crisis of 1837. Sydenham was pledged to the introduction of a system not of complete self-government but of such a form of self-government as would in time render colonial autonomy inevitable. It was wise that self-government should be

introduced gradually and Sydenham's system guaranteed safety. As a preliminary to responsible government, union was necessary. It was opposed by French Canada because it threatened the destruction of French-Canadian nationalism. But French Canada understood neither the system of responsible government nor the real significance of union. The choice of French Canada was between anarchy and union with participation in self-government. The union served to educate French Canada in the practice of government. It suppressed its violence and excesses by responsibility. By destroying the exclusiveness of French nationality, and compelling it to participate in the fortunes of a larger unity, it paved the way for that greater reconciliation of nationalism and imperialism.

Duncan McArthur

CONSTITUTIONAL HISTORY
1763-1840

CONSTITUTIONAL HISTORY

I

UNDER THE TREATY OF PARIS AND THE QUEBEC ACT, 1763-91

Introduction

'MOREOVER, his Most Christian Majesty cedes and guarantees to his said Britannick Majesty, in full right, Canada, with all its dependencies.' This brief statement from the Treaty of Paris is the index to the character of subsequent Canadian constitutions. The constitution of Canada was to be British. The functions of the various offices of government, their relations each to the other and to the body of the governed were to be determined in the light of the constitution of England.

But it was after the model of the English constitution of the eighteenth century—that which aroused the admiration and veneration of Burke and which George III exalted to the dignity of 'the most perfect of human formations'—that the first British constitution of Canada was fashioned. The *cabinet* so brilliantly portrayed on the pages of Bagehot had not yet come into existence. No reform bills had infected the earlier parliaments of George III with the baneful evils of democracy. In its application to the eighteenth century the *sovereignty of parliament*, which Professor Dicey regards as the first principle of the constitution, differs distinctly from its modern application. To the average eighteenth-century observer the separation of the executive, legislative and judicial functions would have appealed as the supreme virtue of the British constitution. However, the determination of George

to follow his mother's advice and to 'be King' was a most pertinent fact in Canadian government. The actual supremacy of the crown was the condition which, above all others, determined the character of the first British constitution of Canada. The constitution of England was capable of development and did in fact undergo a most important transformation during the period here considered. The character of these changes in no small degree gave direction to the development which circumstances wrought in the constitution of Canada.

But the Canadian constitution could not be wholly British. The foundation on which the British structure was to be reared had been prepared by his Most Christian Majesty of France. The civil relations of the vast majority of the people to whom the constitution was to apply were already regulated by French law. Their attitude towards government, their capacity for enjoying constitutional liberties, their ability to perform constitutional duties were determined by their relations with a French colonial government. The principles of the British constitution were introduced into an atmosphere to which they were alien, and the course of Canadian government is at all points modified by the contact and, at times, the conflict of laws, traditions and customs essentially diverse in character.

Likewise, the position of Canada as a colony of the British crown determined in a more particular manner the character of its constitution. Dependence is the essential characteristic of a colonial government; supreme constitutional authority became vested in an office located beyond the confines of the colony. In this respect the constitutions of Canada and the New England colonies were similar, yet they differed in their origin in that the Canadian constitution, as the result of the cession, was imported ready-made, while the New England constitutions were, to a large extent, the product of colonial conditions. The manner in which this extra-colonial sovereignty manifested itself is a most important factor in the growth of the Canadian constitution, and at no time is its significance greater than in the earlier period of its history. The constitution with which we have to

deal is therefore British, grafted on the stem of a French-Canadian dependency.

Sources of the Constitution

The history of the Canadian constitution is derived from many sources. Its letters of adoption into the British family are found in an international treaty. The cession gave to the king in council the right to determine the character of the government of the colony. Its original constitution is therefore contained in a proclamation of the king and a commission under the sign manual. When the prerogative had once been exercised and a representative legislature granted, supreme legislative authority was transferred to the parliament of Great Britain. The statutes of the imperial parliament thus become an important source of the written constitution. Orders-in-council, commissions, proclamations issued under the authority of imperial statutes, proclamations of the governor, ordinances and statutes of the colonial legislature, contribute to complete the scheme of government. These legislative enactments as interpreted by the courts, and with the common law as a general background, compose the law of the Canadian constitution. But in addition there has grown up a mass of convention surrounding the exercise of the prerogative of the crown and the privileges of parliament. The influence of British practice has entered largely into the determination of the custom of the constitution. The expression of these conventions, and the discussion of the transformations which constitute their growth, must be sought in the records of the legislative and executive bodies and in the correspondence of the officials of the colony. From these various written sources the history of the constitution may be gleaned.

In the following pages the constitutions of 1763 and 1791 have been taken as marking the beginnings of distinct periods in the history of the constitution. With these as a basis an attempt has been made to trace the development in the exercise of sovereign power by the various branches of government. This survey has been made to include the two periods

which may be considered constitutionally abnormal, the one prior to the establishment of civil government in 1763, and the other following the suspension of the constitution in 1837 and resulting in the union of the provinces of Upper and Lower Canada in 1841.

The Crown and the Imperial Parliament

The capitulation of Quebec introduced into Canadian government a new factor—the sovereignty of the British crown. The general relations existing between the sovereign and a colony were the product of the British colonial system and had been evolved many years before Canada became a British possession. While these relations were a most important factor in the government of the colony, they find but a very inadequate expression in its constitution ; they were presupposed in the constitution and were, in fact, considered as superior to it. Sovereignty was exercised in a two-fold manner—by the king in council and by the king in parliament. Executive and administrative acts were the expressions of the king in council, while legislative functions were performed at times by the king in council, though normally by the king in parliament.

In the transaction of the executive duties connected with the colonies the crown operated through the office which in later years became popularly known as Downing Street. For many years before the conquest of Canada, a commission, appointed by the crown and bearing the name of the Board of Trade and Plantations, existed for the purpose of collecting information relating to colonial affairs, and, when required, of tendering advice to the crown. Executive responsibility was borne by the secretary of state for the Southern department until 1768, when a separate secretary of state was appointed for the management of colonial affairs. In 1782 a complete change was made in the administrative system. The Board of Trade and Plantations and the office of secretary of state for the Colonies were alike abolished, and the oversight of the Colonies was assumed by the secretary of state for Home Affairs. Four years later an advisory committee of the Privy Council was created for Trade and Foreign

Plantations. In 1794 a further reorganization was effected, when colonial affairs were brought under the newly created office of secretary of state for War—a department which a few years later became officially known as that of the secretary of state for War and the Colonies. During the remainder of the period here considered this office continued to be the channel of communication between the crown and the colony.

The sovereignty of the king in council was most prominently manifested in the appointment and control of the colonial governor. The selection of the governor was in all cases subject to the approval of the king, and the position was held only during the royal pleasure. The governor's commission, and the instructions which determined his administrative policy, though issued in the name of the king, were prepared by the Board of Trade and Plantations. The more minute instructions on the detail of administrative policy were contained in the correspondence between the colonial secretary and the governor, which expressed the opinions of the king's responsible advisers.

In the appointments to colonial offices, particularly during the period immediately following the Conquest, the control of the crown was conspicuously exercised. The chief justice, the attorney-general, the receiver-general, and the collector of customs were appointed directly by the crown. The exercise of this prerogative was later greatly modified, and appointments to important stations in the province, though in the name of the king, were in reality made by the governor.

In the actual administration of colonial affairs the crown exercised a most effective control. This was particularly manifested in the administration of the provincial finances. The revenue of the colony was derived from several sources. The casual and territorial revenue and the seigneurial dues, which in New France had been paid to the king, by the cession became vested in the British crown. Customs dues, productive of a very considerable revenue, were levied by various British statutes, and in particular by the Quebec Revenue Act of 1774. The funds derived from these various sources were paid to the receiver-general of the province and were accounted for to the commissioners of His Majesty's

Treasury. After the expense of collection had been deducted, the proceeds were appropriated for the expenses of the government of the province on the warrant of the lord high treasurer or the commissioners of the Treasury. In actual practice, however, the warrant of the governor was considered sufficient authority for the payment of funds in the possession of the receiver-general. At no time during the early history of the colony were these resources adequate to meet the expenditure of the province, and the balance was paid from funds at the disposal of the imperial parliament. Thus the revenue of the province was created by the British parliament and was appropriated by the officers under the immediate control of the crown.

During the period between the Conquest and the promise of a representative legislature in 1763, the king in council exercised supreme legislative power in Canada. The legislative supremacy of the crown was still further expressed in the right to conclude treaties affecting the interests of the colony and to disallow colonial legislation.

Supremacy in ecclesiastical affairs, in the creation of parishes, in the erection of rectories and in the appointment to ecclesiastical benefices was formally claimed by the crown. While the free exercise of their religion granted to the Roman Catholic subjects by the Quebec Act was subject to the king's supremacy, the actual exercise of the royal supremacy was, for political reasons, permitted to rest in abeyance during the first half century of British rule. It was only when later years introduced new political factors that the question of ecclesiastical supremacy became of practical importance.

The defence of the colony was a particular concern of the crown. Control of the militia raised in the colony was lodged with the governor, while the commander-in-chief of the North American army exercised command over the regular force stationed in the province. The presence of several regiments of the army thus introduced the authority of an officer who seldom resided within the colony, and whose policy not infrequently clashed with that of the civil governor.

The prerogatives already considered had been exercised by the king in council. Supreme legislative authority in

Canadian affairs was, after 1763, vested in the king in parliament. In a statute of 1766, which related particularly to the American colonies, the right of the imperial parliament to make laws binding on the colonies 'in all cases whatsoever' was asserted.[1] This authority was exercised in the regulation of colonial questions in general, in determining issues of supreme importance to particular colonies, and in the regulation of the trade and commerce of the colonies. The American Revolution resulted in a revision of the attitude of the British parliament towards the regulation of colonial commerce. The Declaratory Act of 1778[2] abandoned the right to levy taxes from a colony for the purpose of a revenue, limited the exercise of legislative authority in the imposition of customs dues to the necessary regulation of commerce, and authorized the appropriation of the proceeds for the use of the colony from which they had been collected. This act remained a guarantee against taxation of the colonies by the imperial parliament.

Military Government

During the period of British occupation prior to the Treaty of Paris the government of Canada was vested in the officer commanding the forces. After the capitulation of Quebec, General Monckton, who succeeded General Wolfe in command of the forces at Quebec, appointed Brigadier-General James Murray as governor and Colonel Burton as lieutenant-governor of the conquered territory. As an officer of the army Murray was subordinate to Sir Jeffrey Amherst, commander-in-chief of the forces in North America, while as governor of Quebec he was acting under the instructions of His Majesty's secretary of state for the Southern department. The relation between Murray and Amherst was not clearly defined, but the confusion, though productive of much personal animosity, did not seriously impair the efficiency of the military government.

As governor of Quebec Murray exercised supreme legislative, executive and judicial authority. The conditions of the colony forced on the governor the rôle of a paternal despot,

[1] 6 Geo. III, cap. 12. [2] 18 Geo. III, cap. 12.

and his sphere of legislative authority extended to the most minute details of the life of the community. As occasion arose, proclamations and ordinances were published containing such regulations as were considered necessary for the security and comfort of the inhabitants. While the governor himself in many cases acted as magistrate, he was compelled to delegate his judicial functions to subordinate judges.

The capitulation of Montreal in September 1760 completed the conquest of the colony and occasioned a more definite organization of the provisional government. For purposes of administration the territory was divided into three districts, consisting of the towns of Quebec, Three Rivers and Montreal, with the territory depending on each. The government of each district was vested in a governor, who, subject to the approval of the crown, exercised supreme authority within his jurisdiction. The instructions issued to each of the governors by the commander-in-chief ordered him to take possession of the district, 'governing the same untill the King's Pleasure shall be known, according to the Military Laws, if you should find it necessary; but I should chuse, that the Inhabitants whenever any Differences arise between them, were suffered to settle them among themselves agreeable to their own Laws and Customs; this toleration nevertheless not to extend beyond what shall appear Consistent with Safety and prudence.'[1]

Amherst's instructions to the governors contained directions for the administration of justice. Cases of theft and murder were to be dealt with according to military law, while for the ordinary disputes between inhabitants a less summary process was established. At the base of the new system were the French captains of militia, who, unless they objected, were confirmed in their positions and granted new commissions by the governor of their district. Above the captains of militia were the British officers in command of the troops, while the governor was the head of the system. Cases were brought first to the captains of militia to be settled according to the principles of equity and the accepted customs of the people. More difficult cases were brought to the

[1] The Canadian Archives, M 216, p. 250.

commander of the troops, and such as could not be settled by this officer were referred to the governor. The governor was empowered to determine cases singly, or, should he desire it, to seek the advice of a military council consisting of the leading officers of the district. While these general features of a judicial system were adopted in each of the districts, minor modifications and extensions were introduced from time to time by the various governors.

The Establishment of Civil Government

The definite acquisition of Canada by the Treaty of Paris directed attention to the question of the establishment of civil government. The commissioners for Trade and Plantations advised that the Canadian constitution should be modelled on the government of the American colonies, and that a public declaration should be made of His Majesty's intentions in order to give confidence and encouragement to such of his subjects as seemed inclined to settle in Canada. Accordingly, on October 7, 1763, a proclamation was issued declaring with reference to the colonies of Quebec, East Florida, West Florida and Grenada that the governors had been authorized, whenever circumstances would permit, to call assemblies similar to those of the British colonies in America. 'In the meantime,' it declared, 'and until such Assemblies can be called as aforesaid, all Persons Inhabiting in or resorting to our said Colonies may confide in our Royal Protection for the enjoyment of the Benefit of the Laws of our Realm of England.' To this end directions were given for the constitution of courts for determining all causes, civil and criminal, 'according to Law and Equity, and as near as may be agreeable to the Laws of England.' In the November following James Murray was appointed governor-in-chief of the Province of Quebec. The commission to Governor Murray contains an outline of the first written constitution granted to Quebec. In brief, the government was to consist of a governor and council, and, if considered desirable, of a legislative assembly.

The Governor

The governor was the representative of the sovereign in the colony, and as such exercised many of the prerogatives of the crown. His executive functions involved his relationship to the judiciary, to the council in its executive and legislative capacities, to the militia and to the church.

The governor was authorized, with the consent of the council, to erect such courts of justice as should be considered necessary. This power, however, was never exercised as a prerogative, and the creation of courts came to be considered as a subject for legislative action. The appointment of judges, sheriffs and the necessary officers of the peace was vested in the governor in council, while for valid cause these officers could be dismissed by the governor alone. When, in 1778, Guy Carleton dismissed the chief justice, Peter Livius, an investigation was demanded, and the commissioners for Trade, after examining the records relating to the case, completely exonerated the chief justice and ordered his reinstatement. The prerogative of pardon was exercised by the governor, though special cases were reserved for the decision of the crown.

The right to nominate for the regular appointments to the council gave the governor a measure of control over its policies. This, however, did not prevent factions from arising in the council antagonistic to the governor, and it was the experience alike of Murray, Carleton and Haldimand that the governor could not completely dominate the action of the council. On the more important questions of state, specified in the commission and instructions, the governor was required to act on the advice of the council. On all other questions, however, the governor followed his own pleasure with regard to consulting the council. In 1766 a group in the council took occasion to remonstrate with Governor Carleton for summoning only certain members of the council, and drew from the governor a very pointed reply. 'On all matters which do not require the consent of council,' said Carleton, 'I will call together such Councillors as I shall think best qualified to give me Information : and further, that I will ask

the Advice and Opinion of such Persons, tho' not of the Council, as I shall find men of good Sense, Truth, Candor, and Impartial Justice. . . . After I have obtained such Advice, I will still direct as to me shall seem best for His Majesty's Service, and the Good of His Province committed to my Care.' [1]

The instructions to the governor required him to lay before the council 'such and so many of Our said Instructions wherein their Advice and Consent are made requisite.' Carleton had seen fit to withhold the instructions from the council, and his policy was followed by Haldimand. The dismissal of Chief Justice Livius, who in the council had moved for a communication of the instructions, brought the question before the commissioners for Trade. A special additional instruction was issued in March 1779, directing Haldimand to lay the instructions before the council. Haldimand persisted in withholding them, pleading the interests of the king's service as his justification. This conduct was severely censured alike by the Board of Trade and by the secretary of state, who informed Haldimand that his refusal to comply with the instructions was considered as 'such an Instance of disobedience to the Royal Authority as ought not to be passed over, if longer persisted in.' [2] In the interpretation of this order Haldimand exercised considerable liberty, for on August 18, 1781, he informed the council that 'he was directed by His Majesty to lay before them such articles of his private Instructions as he should think proper,' [3] and then communicated to them only three articles of the instructions.

The governor's commission endowed him with a supremacy in legislation. In 1774 the formation of a legislative assembly was contemplated, and the governor was given a negative voice against both the council and assembly. This power was seldom, if ever, exercised, legislation of doubtful validity being reserved for the decision of the crown.

[1] For the correspondence relating to this question see Carleton to Shelburne, October 25, 1766: Canadian Archives, Q 3, p. 261.

[2] See Germain to Haldimand, April 12, 1781; Canadian Archives, Q 18, p. 37; also Q 18 B, pp. 143, 155 and 182.

[3] See the Minutes of the Legislative Council for August 30, 1781.

The governor was vested with authority to raise troops and to employ them for the defence of the colony, and in time of war he was empowered to execute martial law. He was authorized, with the advice of the council, to build and equip such fortifications within the province as should be deemed necessary. The relation between the civil and military authorities was productive of serious friction during the administrations of Murray and Haldimand. After the Conquest a large number of troops remained for garrison duty at Quebec, Three Rivers and Montreal. The officers in command of the forces at the two latter points refused to recognize the authority of the civil governor and claimed that they were responsible to the commander-in-chief of the forces in North America. This conflict of jurisdiction continued for many years and was not settled until the civil and military commands were vested in the one person.

The constitution contained provision for the administration of the government in case of the death of the governor or of his absence from the province. The offices of lieutenant-governor of Montreal and of Three Rivers, created by General Amherst in 1760, were continued, and the lieutenant-governors were made *ex officio* members of the council. The commission to Governor Murray provided that in the absence of the governor the administration was to devolve on the senior lieutenant-governor, or on the eldest councillor resident in the province. The full power of the governor, however, was not transferred to the president of the council, as he was instructed to 'forbear to pass any Act or Acts, but what are immediately necessary for the Peace and Welfare of the said Province, without Our particular Order for that purpose.' [1]

In 1764 Colonel Irving was appointed Lieutenant-Governor of Montreal and Hector Cramahé of Three Rivers. These, however, were the last appointments which were made, and the offices became extinct.

Although General Murray returned to Britain in 1766,

[1] Instructions to Governor Murray, quoted in *Constitutional Documents 1759-91*, Shortt and Doughty, 1907, p. 148.

he retained the post of governor-in-chief until 1768. During these years Guy Carleton was administering the government under a commission as lieutenant-governor of the province. On Carleton's departure in 1770, Cramahé as eldest member of the council became president, and in July 1771 was appointed lieutenant-governor. From this time onward there was but one lieutenant-governor, who presided over the meetings of the legislative council and assisted the governor-in-chief in the administration of the province.

It will thus be seen that the supremacy of the crown in the government of Britain found its counterpart in the supremacy of the governor in the administration of Canada. Extensive executive powers and an effective check on legislation, combined with the crown's control of the public revenue, made the governor-in-chief dictator in the administration of Canadian affairs.

The Council

In the administration of the government of the province the governor was given the assistance of a council. As originally constituted in 1763, the council was composed of the lieutenant-governors of Montreal and Three Rivers, of the chief justice of the province, of the surveyor-general of customs for the northern district, and of eight other persons nominated by the governor. Should the number of resident councillors fall below seven, the governor was authorized to appoint temporary members with the full power of councillors. The oath required on admission operated as an effective means of excluding Roman Catholic subjects from its membership.

The necessity of a change in the constitution of the council early became evident. In 1769 the commissioners for Trade, in a report on the state of the Province of Quebec, recommended that its membership should be increased to fifteen, which should include not more than five French Canadians. A reform in accord with this suggestion was made by the Quebec Act, when the membership was fixed at not less than seventeen or more than twenty-three, and the religious test was removed from the qualification of members.

The council was appointed by the governor subject to the approval of the crown, while members could be suspended by the governor with the consent of a majority of the council, or, if for reasons which could not be communicated to the council, by the sole authority of the governor.[1] If a member of council remained absent from the country for a period exceeding six months without the consent of the governor, or for a period exceeding a year without the sanction of the crown, his seat was vacated.

The functions of the council were both legislative and executive. While originally no such distinction was made, there developed in time a difference between the council as a law-making and as an administrative body. Subsequent to the Quebec Act the legislative council met always at Quebec between January 1 and May 1. The Privy Council, as the council in its executive capacity came to be called, was assembled at whatever time or place seemed necessary. The governor-in-chief, or, in his absence, the lieutenant-governor, presided over the meetings of the Privy Council, while, with but few exceptions, the legislative council met under the presidency of the lieutenant-governor or the senior member of the council. A more important distinction, however, arose between the legislative council and the Privy Council. The quorum of the council, as established in 1763, was fixed at five, and the Quebec Act, after increasing the membership of the council, provided that 'any five of the said Council shall constitute a Board of Council for transacting all Business, in which their Advice and consent may be requisite, Acts of Legislation only excepted.'[2] This instruction was interpreted by Carleton as permitting him to select five members of the council as a Privy Council, and accordingly, on August 7, 1776, he constituted a Privy Council consisting of five particular members and 'such others as the Lieutenant Governor should think proper to send for.'[3] This committee examined the accounts for the expenditure of public money, reported

[1] See the case of the dismissal of Chief Justice Livius, p. 430.
[2] Instructions to Guy Carleton, 1775, Article 2.
[3] See the Minutes of the Privy Council, August 7, 1776.

on the more important matters of state, and in general performed the duties of the executive advisers to the governor. Carleton's interpretation of his authority was manifestly contrary to the original intention of the instruction, which did nothing more than fix a quorum for the council acting as an executive body. The subject was brought to the attention of the secretary of state by Chief Justice Livius, and in 1779 a special instruction was sent to Governor Haldimand informing him that the article constituting the Board of Council 'shall not be understood to delegate Authority to you Our Governor to select and appoint any such Persons by Name as you shall think fit to make such Quorum, terming the same a Privy Council, or to excuse you from summoning to Council all such thereunto belonging as are within a convenient distance.'[1] This provision was embodied in the later instructions sent to Governor Carleton.

The authority of the council as a legislative body was circumscribed within very definite limits. The constitution of the province as established in 1763 had in contemplation the summoning of an elective assembly, which, with the governor and council, should make laws for the colony. In the meantime the jurisdiction of the governor and council was confined to the passing of such rules and regulations 'as shall appear to be necessary for the Peace, Order and good Government of Our said Province, taking Care that nothing be passed or done, that shall any ways tend to affect the Life, Limb or Liberty of the Subject, or to the imposing any Duties or Taxes.'[2] This restraint bore particularly on the penalty clauses inserted in various bills, with the result that several provincial ordinances were disallowed by the crown. The Quebec Act partially removed these restrictions, though jurisdiction was not extended to the imposing of any taxes or duties except such as were necessary for making roads, erecting and repairing public buildings, and for the purposes of local improvements.

The jurisdiction of the council acting as an advisory

[1] Additional Instruction to Governor Haldimand, March 29, 1779. See *Constitutional Documents, 1759-91*, Shortt and Doughty, 1907, p. 476.

[2] Instructions to General Murray, 1763, Article 11.

body to the governor was defined in the commission and instructions to General Murray in 1763. In general its consent was necessary in all acts touching the constitution of the courts, the erection of fortifications, the appropriation of money, the establishment of markets, the granting of lands and the suspension of its own members. The attitude of the governors to the council underwent a distinct change during this period. Carleton consulted his council only on the questions specified in his commission and instructions.[1] The changes effected in the constitution of the council by the Quebec Act seemed to give it greater weight ; while the frequent absence of the governor-in-chief from the colony placed upon it a much greater responsibility. The defence of the province from invasion, the settlement of the loyalists and the growth of the trade of the colony all contributed to increase the volume of business requiring the attention of the council, with the result that its place as an executive branch of government grew steadily in importance.

The Courts

The organization of the courts of justice of the province was left by the commission to General Murray as a subject for local legislation, and a general direction was given in the instructions that the judicial establishment of the older colony of Nova Scotia should be followed as far as circumstances would permit. Accordingly one of the first questions to occupy the attention of Murray and his council was the constitution of the courts. The attorney-general prepared a report containing a survey of the judicial system of Nova Scotia, and on September 17, 1764, an ordinance was passed by the governor and council establishing courts and regulating the administration of justice throughout the province.

For judicial purposes the province was divided in 1764 into the districts of Quebec and Montreal, separated, on the south side of the St Lawrence, by the River Godfroy, and on the north by the River St Maurice. The influx of loyalists

[1] See p. 431.

and the settlement of the districts bordering the Upper St Lawrence and the Great Lakes rendered necessary the creation of new districts, and accordingly, in 1788, the districts of Lunenburg, Mecklenburg, Nassau and Hesse were formed in the region which was later to become Upper Canada, and the district of Gaspe was separated from Quebec.

The ordinance of 1764 established two main courts—the Court of Superior and the Court of Inferior Judicature. In this division both civil and criminal jurisdiction were combined in certain particular courts. In 1777, however, a sharp distinction was drawn, and the criminal courts became entirely separate from those of civil jurisdiction.

The Superior Court, or Court of King's Bench, was composed of the chief justice of the province, or, according to provision made in 1777, in his absence of commissioners appointed to execute the office of chief justice. As originally constituted it was given authority 'to hear and determine all criminal and civil causes, agreeable to the Laws of *England*, and to the Ordinances of the Province.'[1] Its civil jurisdiction brought it into conflict with the Court of Common Pleas, and after 1777 the Court of King's Bench took cognizance of criminal cases only. Originally the court sat twice annually at Quebec; a third term was added in 1766, while later it met twice in the year in both Quebec and Montreal. At least once in the year, and more frequently if necessary, the chief justice held Courts of Assize and Gaol Delivery in Montreal and Three Rivers.

Next in importance as a court of criminal jurisdiction was the Quarter Sessions. The office of Justice of the Peace, so important in the British judicial system, was introduced by the ordinance of 1764. Justices of the peace were appointed by the governor for each district, and at first were granted both criminal and civil jurisdiction, but in 1770 their authority was confined to criminal cases. The Court of Quarter Sessions, by hearing and determining all minor criminal cases, became a most important factor in preserving the peace of the community.

[1] Ordinance of 1764; *Constitutional Documents, 1759-91*, Shortt and Doughty, p. 149.

The Court of Common Pleas was the important court for the trial of civil cases. Originally a single Court of Common Pleas existed for the entire province, but with the reform of 1770 separate courts were constituted for each of the districts of Montreal and Quebec, consisting of three judges appointed by the governor. A single judge in weekly sittings determined finally all cases of £10 and under. Two judges of the Court of Common Pleas were competent to hear cases in excess of £10, and their decisions were subject to appeal.

The manner of conducting trials in the Court of Common Pleas was the subject of much controversy. The ordinance of 1764 directed the judges 'to determine agreeable to Equity, having regard nevertheless to the Laws of *England* as far as the Circumstances and present Situation of Things will admit.' The Quebec Act definitely introduced the laws of Canada in most cases coming before the Courts of Common Pleas. The original constitution of the court made trial by jury compulsory if demanded by either party; this provision was, however, omitted from the ordinance reconstituting the court in 1777. In 1785 the British element in the council succeeded in securing trial by jury at the option of either party in mercantile cases or in cases of personal wrongs in which compensation was sought.

The supreme court of civil jurisdiction was the Court of Appeals, composed of the governor and council of the province. Originally its jurisdiction was confined to cases in which the amount at issue exceeded £300. The enlargement of the council by the Quebec Act made necessary a more definite constitution of the court, so that from 1777 it consisted of the governor, lieutenant-governor or chief justice of the province, together with any five members of the council, the judges who had sat in the lower court excepted. Its jurisdiction was also extended to cases in which the amount involved exceeded £10 and to all civil cases in which future rights were bound. In all cases in which future rights were concerned, and in other cases involving £500, an appeal rested from the provincial Court of Appeals to His Majesty in Council.

II

UNDER THE CONSTITUTIONAL ACT, 1791-1840

THE Constitutional Act of 1791 introduced two new features of importance into the government of Canada. The colony was divided into the provinces of Upper and Lower Canada, and a representative legislative assembly was established in each province. The government was vested in a governor or lieutenant-governor, an executive council, and a legislative council and assembly. The judicial organization having, with the exception of the Court of Appeals, been created by provincial legislation, was unaffected by the Constitutional Act. It is proposed to survey the constitution of each of these governing bodies, and to trace their development in the scheme of government until the suspension of the constitution in 1838.

The Crown and the Imperial Parliament

While the change in the form of government effected by the Constitutional Act did not alter the relations subsisting between the crown and the colony, it was the cause of the development of a determined resistance to the exercise of certain of the royal prerogatives. The question of the ecclesiastical supremacy of the crown was brought into prominence soon after the passing of the Constitutional Act. Parishes of the Church of England were to be erected by letters patent under the great seal of the province issued by the governor upon the advice of the executive council. The power of erecting parishes of the Roman Catholic Church, by a provincial ordinance of 1791,[1] was vested in the governor and the superintendent of the church. The supremacy of the crown in the appointment to church offices was of much greater importance. The exercise of this prerogative in the government of the Church of England aroused no opposition, since it had the sanction of the tradition and teaching of the church. Such was not the case with the Church of Rome.

[1] Ordinances of Quebec, 31 Geo. III, cap. 6.

Prior to the Conquest the Bishop of Quebec, though nominated by the king of France, received his appointment and derived his powers from the See of Rome. He was then admitted to take the oath of allegiance and was installed in his bishopric by royal letters patent. The patronage of the church under the French régime was vested in the bishop. The supremacy of the crown was in a special manner preserved by the Treaty of Paris and the Quebec Act, while the instructions issued in 1791 directed that no person was to have holy orders conferred upon him or to have the care of souls without a licence from the governor.

While the settlement effected at the time of the capitulation of Montreal remained silent on the question of the appointment of a bishop, Monseigneur Briand, the first titular bishop subsequent to the Conquest, was elected by the clergy, and, after receiving the approval of the governor, was consecrated as bishop under the authority of the Pope. He was then compelled to take the oath of allegiance to the crown in his capacity of superintendent of the Roman Catholic Church. It early became the practice for the bishop to select, subject to the approval of the king's representative, a coadjutor who, it was understood, should succeed to the office on the death or retirement of the bishop. The exercise of the crown's supremacy in connection with the appointment of a bishop became confined to the approval of the choice of a coadjutor and of his succession to the office of superintendent of the church. The nomination of curés to parishes was regularly made without reference to the civil authorities.

It will thus be seen that during the years immediately following the Conquest a very feeble effort was made to enforce the ecclesiastical supremacy of the crown. The constitution of a popular assembly, and the consequent advantage of securing a majority friendly to the government, gave a new importance to the patronage of the church. The influence of the clergy in the election of representatives to the assembly was a factor which even the governor could not afford to neglect. During the administration of Sir Robert Milnes, and on other subsequent occasions, attempts were made to secure

an agreement by which the supremacy of the crown in the nomination of curés could be made a reality. The Canada Bill of 1822, which proposed the reunion of the Canadian provinces, but which the government saw fit to withdraw, contained specific provisions making the appointment of curés to depend on the consent of His Majesty. Though involving claims which were inconsistent with the tenets of the church, the constitutional rights of the crown to exercise its prerogative of supremacy could not be denied. Nevertheless it was considered expedient not to insist on a strict compliance with the law, and the crown remained content with a purely nominal supremacy.

The exercise of the royal prerogative in appropriating the revenues of the crown became an important issue during the period succeeding the passing of the Constitutional Act. The crown had at its disposal the territorial and other revenues of the king of France to which it had succeeded at the time of the Conquest, the proceeds of various British statutes passed prior to the Declaratory Act of 1778 either for the purpose of providing a revenue or for the regulation of the trade of the Empire, as well as certain fixed sums granted by provincial legislation. In addition, the British parliament had been in the habit of making appropriations from the British Treasury for the support of the government of the Canadas, and the governor was at all times able to draw on the military chest for limited appropriations. The assembly, on the other hand, was entitled to appropriate only such revenues as were levied by provincial legislation. The crown, therefore, by virtue of its possession of these funds, was able to exercise an effective control over the administration of the government. When the right to this control was questioned by the assembly, it was but natural that an attack should be made on the royal revenues. The House of Assembly, while admitting the right of the crown to dispose of its revenue prior to 1791, maintained that the Constitutional Act introduced 'an inherent right in British subjects to impose taxes, and to regulate their application by their lawful representatives.'[1] The crown insisted on the exercise of its constitu-

[1] See the Journals of the House of Assembly of Lower Canada, 1836, p. 70.

tional right, and carried out its determination to the extent of conducting the administration without securing financial aid from the legislature of the province. The British practice, it was maintained, afforded no parallel to the Canadian situation. The control which the British parliament exercised over the revenue of the crown had been established by compact between the crown and the houses of parliament on the accession of each sovereign. His Majesty was prepared to settle the issue in Lower Canada on the test of public advantage, but insisted that in any agreement with the provincial legislature a guarantee should be given that suitable provision would be made for the support of civil government and for the administration of justice. The appeal to arms in 1837 indicated that such an agreement had not been reached.

No attempt was made in the written constitution to define the relative spheres of legislative authority of the imperial and provincial parliaments. In general the imperial parliament passed laws affecting interests extending beyond a single colony—as, for instance, the regulation of trade, the naturalization of aliens and all questions of international significance. In addition, certain extraordinary affairs of colonial concern were reserved for determination by the imperial parliament. These issues, while, in a sense, strictly colonial, were from their very great importance considered of imperial concern. To this class belonged legislation affecting the constitution of the colonies, its amendment and suspension, and particular issues growing out of special features of the constitution Hence the clergy and crown reserves afforded ground for the legislative interference of the imperial parliament. In matters of purely colonial concern the exclusive right of the colonial legislature was acknowledged. The principle was given a clear statement in a dispatch of Lord Glenelg relating to the clergy reserves in 1835:

> Parliamentary Legislation on any subject of exclusively internal Concern in any British Colony possessing a representative Assembly is as a General rule unconstitutional. It is a right, of which the exercise is reserved for extreme Cases, in which necessity at once creates and justifies the exception. But important as is the

> question of the Clergy Reserves in Upper Canada, yet I cannot find in the actual state of the question any such exigency as would vindicate the Imperial Legislature in transferring to themselves the settlement of this Controversy.[1]

The power of amending the constitution of the province, which, it would seem, belonged exclusively to the body which had created it, was virtually claimed by the House of Assembly of Lower Canada. The constitution of the executive and legislative councils was a special grievance which could be removed only by a constitutional amendment. To secure this amendment the assembly first adopted the course of petitioning His Majesty and the houses of parliament setting forth the defects and suggesting remedies. On the failure of the imperial parliament to satisfy these demands, the assembly proposed the calling of a constitutional convention composed of delegates 'freely and indiscriminately chosen by all classes and from all classes of the community, so as to be in harmony with the interests of the Province and with those of Your Majesty's Government.' Such a body, reporting the result of its deliberations to the imperial parliament, 'could do no discouragement to the supreme authority of the Empire, while it would be in unison with numerous examples of free institutions on this continent.'[2] The attitude of the British government to the constitutional convention was expressed by Lord Goderich in a dispatch to Lord Aylmer: 'On the mode proposed His Majesty is willing to put no harsher construction than that of extreme inconsiderateness; to the object sought to be obtained, His Majesty can never be advised to assent, as deeming it inconsistent with the very existence of Monarchical Institutions.'[3]

The next step of a party in the assembly was to claim for the provincial parliament the authority of amending its own constitution. On March 3, 1836, the assembly resolved:

> That it is expedient to amend a certain Act passed in the Parliament of the Kingdom of *Great Britain*, in the

[1] The Canadian Archives, Q 388 B, p. 238.
[2] Journals of the House of Assembly, Lower Canada, 1832-33, p. 572.
[3] *Ibid.*, 1834, p. 36.

> thirty-first year of the Reign of His late Majesty *George* the Third, Chapter thirty one, as relates to the constitution and formation of the Legislative Council of this Province, and to substitute other provisions in the place thereof with the view of better ensuring the efficiency of the Provincial Government to provide for the peace, welfare and good government of this Province.[1]

A bill in accordance with this resolution was introduced but failed to secure a second reading.

The imperial parliament also undertook to legislate in certain issues of common concern to the two Canadian provinces and in other matters of more particular interest to Lower Canada. To this local legislation the House of Assembly objected. An act passed in 1825 relating to the tenure of lands was considered by the assembly as contrary to the provisions of the Quebec Act, which had now come to be regarded as a fundamental law. By another British statute special privileges were granted to certain persons respecting the appropriation of the waste lands of the crown. The assembly questioned the right of the imperial parliament to legislate in such matters, claiming that the waste lands differed from the hereditary property of the crown and, as the public property of the state, were subject to the legislative authority of the provincial parliament. The attitude of the assembly to the exercise of the prerogatives of the crown and the supremacy of the imperial parliament was determined by the effect on its own pretensions rather than by a consideration of constitutional validity. In its eagerness to extend its own authority, the representative branch of the legislature was not inclined to consider too seriously the rights of the bodies to which it found itself opposed.

Governor and Lieutenant-Governor

The constitutional position of the governor-in-chief was affected both by the division of the province and by the introduction of a representative legislative assembly. Lord Dorchester in 1791 held the position of governor-in-chief of the provinces of Upper and Lower Canada, Nova Scotia,

[1] Journals of the House of Assembly, Lower Canada, 1836, p. 632.

New Brunswick, Prince Edward Island and Cape Breton. Accustomed to the exercise of extensive executive power, Lord Dorchester interpreted this concentration of authority as evidence of a determination on the part of the British government to preserve a remnant of the North American empire by means of a union expressed in a strong central executive. It was Dorchester's policy to magnify the authority of the governor-in-chief, making him the means of communication between the Colonial Office and the various provinces. Subsequent events proved, however, that Dorchester had not correctly interpreted the policy of the British government. The Maritime Provinces, older in their British allegiance than Lower Canada, had already shaped their course of development along separate and distinctive lines. Likewise, conditions in Upper Canada demanded special individual attention. The result was that the Colonial Office gave instructions direct to the lieutenant-governors of the provinces and confined the governor's powers of general supervision to matters of a military character.

The authority of the governor-in-chief even in military affairs caused serious friction with the government of Upper Canada. The administration of the Indian department, which regulated the affairs of the native tribes of Upper Canada, was under the control of the commander-in-chief, and the exercise of this authority, Simcoe urged, seriously compromised the freedom and independence of the upper province. It seemed necessary, Simcoe wrote to the Duke of Portland,

> that the appearance of Power over all inferior Military emoluments (which Generals in Chief rarely condescend to notice) ought with peculiar propriety to be vested in the Person administering the Government of the Province: at least no new Power, no interfering Arrangement should be admitted, such as the Indian department to circumscribe his Influence, and the British Constitution, being granted to this Province, Your Grace will depend upon it that its Inhabitants will naturally desire to obtain all its qualities and properties,—the real and apparent Independency of their first Magistrate, is considered by them by no means less necessary to promote the Authority of the Crown, than to prove their own

> Emancipation from the Province of Lower Canada, and Military Government.[1]

This attitude naturally aroused the opposition of Dorchester. Writing to the Duke of Portland, he complained that

> instead of authority competent to carry on the King's Service, to distribute orders, regulate their Execution and enforce Obedience ; it seems to be a measure of Office to withdraw all Power from the Person with whom the King's Commissions have placed it, Communications are made, and directions sent to inferior Officers, whereby the intermediate authority is virtually superseded ; which consequently acts as a Recall on the Person in the Chief Command ; the Injury is not in a Recall, but in the manner of bringing it about, which breaks asunder all Ties of subordination and overturns the Authorities of the Crown delegated by the King's Commission.[2]

These counter representations brought forth from the British government a very clear statement of the relations between the governor-in-chief and the lieutenant-governors of the provinces. After affirming the supremacy of the governor-in-chief in military affairs, the Duke of Portland observed with respect to the civil authorities that

> as by His Majesty's Instructions the Lieutenant Governor of each Province is vested therewith, except when you are present, it follows of course that each Lieut. Governor must receive his directions from hence respecting the various concerns of His Civil Government. At the same time, whenever, and as often as Your Lordship shall require information, from any or all of the Provinces, touching such matters as you shall judge proper to represent to His Majesty, I must take it for Granted that the Lieutenant Governors do as it is their duty most readily communicate such information to you, and I hope it is unnecessary to add that any representation from you in consequence thereof, will always meet with due attention from His Majesty's Confidential Servants.[3]

[1] Simcoe to Portland, February 17, 1795: the Canadian Archives, Q 281, pt. 1, p. 273.

[2] Dorchester to Portland, February 20, 1795: the Canadian Archives, Q 71, pt. 2, p. 313.

[3] Portland to Dorchester, May 27, 1795: the Canadian Archives, G 539, p. 121.

There still remained unsettled the question of the relation between the governor-in-chief and the lieutenant-governor of Upper Canada in the case of the two residing within the province. The possibility of the temporary suspension of authority was a contingency which was presented to Lieutenant-Governor Maitland in 1820. If the authority of the lieutenant-governor was liable to be suspended at the will of the governor, it manifestly interfered with the independence of the chief executive of the province. The relation between the governor and lieutenant-governor was on this occasion clearly set forth by Lord Bathurst:

> I have to inform you that so long as the Governor in Chief is not resident within the Province of Upper Canada, and does not take the oaths of office in Upper Canada, he has no control whatever over any part of the Civil Administration, nor are you bound to comply with his directions, or to communicate with him on any Act of your Civil Government. To His Majesty you are alone responsible for the Conduct of the Civil Administration, nor can you be relieved of this responsibility otherwise than by the residence of the Governor in Chief within the Province and by his there taking the Oaths and assuming to himself the Administration, of which it will be his duty to give you proper notice. In such case your functions as Lieutenant Governor will be altogether suspended ; and although you will continue to enjoy, so long as you continue within the Province, all the Salary and emoluments of your Situation of Lieutenant Governor, you will until the Governor in Chief quits the Province, be divested of all Civil Authority. Upon his withdrawing from it, your Authority revives to the same extent in which you possessed it previous to his assumption of the Government. If the Governor in Chief does not take the Oaths, and assume the Government of the Province, he cannot tho' resident therein be considered as Civil Governor, but must be regarded as his Predecessors have been when in the Upper Province under similar circumstances merely in the capacity of Commander of the Forces. I am perfectly aware that much inconvenience might result if the Power which the Governor in Chief possesses of assuming the Government of Upper Canada were to be frequently, or unnecessarily,

> exercised, but I have, on the other hand, such reliance on Lord Dalhousie's judgment, that I am confident his Lordship who has been himself Lieutenant Governor in one of the North American Provinces, now within his government, and as such has had full means of appreciating how important it is that the authority of a resident Lieutenant Governor should not lightly be interfered with, will not without the strongest sense of public duty avail himself of a Power which might embarrass the System of your Government and must tend more or less to diminish the weight of your authority in the Province particularly confided in your Administration.[1]

The necessity of a strongly concentrated authority enforced a departure from the principles here stated during the administration of Poulett Thomson. The governor-in-chief was committed to the carrying out of a definite policy which concerned Upper Canada as well as Lower Canada, and he had no hesitation in supplanting the lieutenant-governor and actively directing the course of the administration. The local authority of the lieutenant-governor was suspended but for the purpose of more effectively carrying into effect the will of the sovereign.

The introduction of the principle of representation in the constitution of one branch of the legislature placed new responsibilities on the governor-in-chief. Legislation could be secured only with the approval of the legislative assembly. It thus became a matter of serious importance that there should be some measure of co-operation between the chief executive and the popular assembly. Certain sections of the province from natural interests supported the government. The patronage at the disposal of the governor was but a feeble agency for securing popular support. Apart from the first parliament held under the Constitutional Act, the executive could not at any time rely on the assistance of a majority in the House of Assembly. While Governor Prevost, by measures of conciliation, succeeded in maintaining friendly relations with the lower house, the general attitude of the assembly, from Prescott's time forward, was one of

[1] Bathurst to Maitland, February 9, 1821; the Canadian Archives, Q 337 A, p. 8.

open and emphatic hostility to the executive. The Constitutional Act, while requiring that the assembly be summoned at least once a year, also empowered the governor to prorogue or dissolve it at pleasure. The exercise of the right of prorogation or dissolution thus became a most important factor in the government of the provinces.

The situation created by a dissolution in Canada was essentially different from that in Britain. In England the necessity of securing supplies by act of parliament placed a most effective check on the resort to dissolution. No such restraint existed in Canada, where the governor, by carefully husbanding the revenues of the crown, was able to continue the administration of government without resort to the assembly. The effect of suspending the legislature was to paralyse all local works and improvements depending on provincial legislation, and to prevent the passing of such regulations as the particular needs of the provinces demanded. The only advantage to be gained by dissolution, from the point of view of the executive, was the return of an assembly more favourably inclined to the government. The exercise of the prerogative resolved itself into a balancing of advantage and disadvantage.

The attitude of the British government was one of cautious reserve. Prorogation was favoured rather than dissolution; under certain circumstances dissolution was recommended, but only as a final resort. The actual determination of the course to be pursued, from the character of the situation, necessarily remained with the governor or lieutenant-governor.

In their exercise of the right of dissolution governors differed—and that very largely according to temperament. The haughty and imperious Craig seemed to revel in scattering the forces of the assembly. He terminated two successive sessions by dissolution. But even Craig admitted that the only justification for a dissolution was its political success, and he was forced to doubt the wisdom of his own actions. In connection with the dissolution, Craig introduced a new feature to which the assembly took decided objection. His speech to the legislature on prorogation contained a severe criticism of the particular conduct of the assembly which

had occasioned his exercise of the prerogative, and was purposely designed to influence popular opinion at the ensuing general election. The exercise of a high constitutional prerogative for distinctly political purposes was defended by Craig on the ground that it was the most essential means of securing the result which the dissolution had in view. The moderate and compromising Sherbrooke was more deeply impressed with the dangers of the dissolution. Writing to Lord Bathurst in July 1816, he expressed the opinion that 'in this country where there is no room for the exertion of a Salutary Government influence such as exists in England, the strong measure of dissolution must in almost all possible circumstances of the country, produce rather evil than advantage ; and can never have that effect which may be given to it in England by the exertion of different means that may be brought into action there for the correction of popular opinion and for securing to the crown a stronger influence in Parliament.'[1] Lord Dalhousie, on the other hand, resorted to the more extreme course of Sir James Craig, and, after the assembly had refused to grant the supply demanded, prorogued it and conducted the administration regardless of the legislature.

The necessity which the constitution imposed on the governor or lieutenant-governor of becoming the leader of a political party tended to degrade the exercise of the prerogative of dissolution. Had the chief executive been able to retain a position of exalted neutrality no objection would have been taken to the exercise of this constitutional right; but when it became the weapon of one party exclusively in a bitter political struggle, it could not but aggravate the hostility of the popular party against the authority which had seen fit to employ it. Only when British constitutional practice succeeded in harmonizing the legislative and executive powers was the right of dissolution and prorogation removed to a position of safety.

The legislative assembly both in Upper and Lower Canada endeavoured, though with little success, to exercise

[1] Sherbrooke to Bathurst, July 15, 1816: the Canadian Archives, Q 137, p. 26.

a control over the executive acts of the governor or lieutenant-governor. In communicating information to the assembly, the chief executive acted according to his own discretion and very frequently refused the requests of the house. Petitions for the removal of public officers were frequently presented, though in very few cases was action taken by the executive. When the assembly of Lower Canada in 1832 unseated one of its members by vote of the house, the governor refused to issue a writ for a new election and was supported in his position by the colonial secretary. While the reasonable demands of the assembly received consideration, it was not the policy of the governor or lieutenant-governor to permit any encroachment on the exercise of their executive authority.

In the absence of the governor-in-chief the administration of the government devolved on the senior Protestant member of the executive council. The office of lieutenant-governor was continued in Lower Canada, although the persons holding the position seldom resided within the province. In 1821 Lord Dalhousie pointed out the great advantage which would result from the active assistance of the lieutenant-governor, and accordingly Sir Francis Burton, who had held the office since 1808, was ordered to Quebec. Burton arrived in the following year, and undertook many of the duties of the chief executive. So impressed was the legislature with the importance of retaining the services of the lieutenant-governor, that an act was passed attaching to the office a salary of £2500 per annum during residence within the province.

In Upper Canada several courses were adopted in connection with the succession to the administration. Lieutenant-Governor Simcoe, on his departure in 1796, gave his special friend, Peter Russell, a commission as president and administrator of the province. The senior member of the council was Alexander Grant, who, on the death of Lieutenant-Governor Hunter in 1805, succeeded to the administration, much to the mortification of Russell. Lieutenant-Governor Hunter, who held, concurrently with his appointment in Upper Canada, the command of the troops in Lower Canada, was frequently required in Quebec in connection with his

military duties. During his absence the duties of the office of lieutenant-governor were by a special commission vested in a committee of the executive council. In 1815, and again in 1817, the mode of succession to the administration was altered by special instructions, and the government was made to devolve on the senior military officer.

The Executive Councils

Although the Constitutional Act and the commission to Lord Dorchester implied the creation of a separate executive council, its actual constitution was set forth in the instructions to the governor-in-chief. The council in Lower Canada consisted originally of nine members; and in Upper Canada of four, while one more was added in 1792. In each case the quorum was fixed at three. The fact that several members of the council in each province did not reside at the seat of government, and that others who had judicial duties to perform were often unable to attend frequently, made it difficult for the governor to secure a quorum. To meet this situation Lord Dorchester suggested an expedient which found an important place in the constitution of the executive council in each province. The governor or lieutenant-governor was authorized to summon by special writ honorary members to the executive council, who should perform the same duties as the regular members. The honorary members of the council received no salary, but it was accepted as the regular procedure that the senior honorary member should succeed to the first vacancy in the regular council.

The constitution of the executive council received the special attention of Lord Dalhousie in the years 1820 and 1821. Lord Dalhousie wished to discontinue the practice of calling honorary members, and, by appointing the proper persons as regular members, hoped to be able at all times to secure a sufficient attendance. The reconstruction which he proposed provided a most interesting forecast of the organization of the cabinet of later date. He suggested that the council should consist of the chief justice of the province, the lord bishop of Quebec, the speaker of the House of Assembly, the civil secretary of the government, the attorney- or solicitor-

general, the auditor-general of public accounts, the receiver-general and the surveyor-general, together with four prominent men selected from the province. The general scheme of reform was approved by the Colonial Office, although objection was taken to the appointment *ex officio* of the speaker of the assembly. However, nothing resulted from this friendly suggestion of reform, and the executive council continued until the time of the rebellion to be an irresponsible committee nominated by the governor.

The power of the executive council was largely advisory. The Constitutional Act conferred legislative authority on the governor and council pending the summoning of the legislative council and assembly. Provincial statutes constituted the council a Court of Appeals, and conferred on it special powers respecting the commitment of persons for high treason. Questions of policy, not as a general rule of the utmost importance, were submitted to the consideration of the council. It supervised the auditing of the public accounts, directed the surveying and granting of the waste lands of the crown, and advised on the administrative details of the provincial government. The more important issues of public policy were not referred to the executive council, but were reserved for the special consideration of the colonial secretary. Sir Francis Bond Head's dispute with his executive council in 1836 brought the constitution and powers of the council into prominence. The governor claimed that, except in the cases specified in his instructions, he was not bound to ask or to follow the advice of the council. The council, on the other hand, persisted in reading into the expression 'for the affairs of our said province,' used in describing the council, a right to be consulted on all matters of general policy. Head was obstinate, and the entire council, refusing to become responsible for measures on which they were not consulted, tendered their resignations.

The relation of the executive council to the legislature and judiciary was the occasion for much criticism. In both provinces judges were frequently appointed to the executive council, and their selection was defended on the ground that their training and experience specially fitted them for the

duties of advising the representative of the crown. The assembly maintained that the independence of the judges was seriously compromised by their participation in the meetings of an executive council. In Lower Canada a bill was passed in 1832 disqualifying the judges from sitting in the executive and legislative councils, but was disallowed by His Majesty because satisfactory provision had not been made for the payment of the salaries of the judges. The principle of the separation of the executive and judicial authorities was accepted by the British government, and a pledge was given that no judge should in future be appointed to the executive council.

From the establishment of the constitution an intimate connection was maintained between the executive and the legislative councils. Two-thirds of the members of the executive council of Lower Canada, and the entire council of Upper Canada, were members of the legislative councils of their respective provinces. The appointments to the two councils were made by the governor or lieutenant-governor, and were confined, with very few exceptions, to the party supporting the administration. Membership in the legislative council in time came to be regarded as a preliminary to appointment to the executive council. Members of the executive council occasionally found seats in the earlier assemblies of Lower Canada, and served as a convenient means of communication between the governor and the legislature; but as the popular opposition to the governor grew, it became increasingly difficult for members of the executive council to secure election. The intimate personal connection which was thus maintained between the executive and legislative councils, and the identity of their interests at the time when the provinces were divided into hostile camps, destroyed popular confidence in the integrity and independence of the executive council.

The assembly of Lower Canada suggested a reform very similar to that proposed by Lord Dalhousie. A council composed exclusively of men unconnected with the government would not possess the very necessary *esprit de corps* produced by a keen sense of personal responsibility, and would

be incapable of pursuing continuous systematic action. On the other hand, officers of government would be in danger of losing sympathy with the people and would be inclined to maintain authority and to stifle inquiry when it affected their particular interests. The assembly proposed that the council should consist of the efficient heads of departments, together with men of outstanding fitness who were unconnected with the administration. Such a council would have become a real factor in the government of the colony. It would have relieved the governor of the necessity of constantly appealing to the judgment of the Colonial Office in questions which should have been settled in Canada, and would have removed the colonial secretary from the petty bickerings and jealousies of provincial parties. Such a reform would have contributed greatly to the efficiency of the colonial government, and by rendering the Colonial Office more independent would have secured for its policies a greater measure of respect and a more friendly consideration.

The Courts of Justice

The reform of the judicial system was one of the first questions to receive the attention of the governments of Lower and Upper Canada. In the lower province the confusion into which the administration of justice had been brought made an early reform absolutely necessary, while the separation of the upper province from Quebec left it with a judicial system utterly unfitted to the special needs of its people. A plan for the reorganization of the courts of Lower Canada was prepared by Dundas in 1792, and a bill based on it was introduced in the following year. This legislation in a greatly amended form became the Judicature Act in 1794,[1] and, though amended in many of its features of minor importance, remained the basis of the judicial organization of the province until 1840.

The Judicature Act divided the province into the three districts of Quebec, Montreal and Three Rivers, and erected the county of Gaspe into an inferior district. The influx of immigrants into the Eastern Townships made it necessary

[1] Statutes of Lower Canada, 34 Geo. III, cap. 6.

in 1823 to form that section of the province into the district of St Francis. In each of the districts of Quebec and Montreal a Court of King's Bench was established, possessing both civil and criminal jurisdiction. The Court of King's Bench for the district of Quebec consisted of the chief justice of the province and three puisne justices, and of Montreal of the chief justice of the Court of King's Bench for that district and three puisne justices. In 1818, and again in 1838, authority was given for the appointment of assistant judges, who should in case of necessity relieve the regular judges of the court. For the trial of criminal cases two terms were held annually in each district, the one at Quebec and the other at Montreal, at which the chief justices presided and were assisted by one or more of the puisne judges. Provision was made in 1823 by which any two justices of the Court of King's Bench were authorised to hold criminal terms. The judges of the Courts of King's Bench were directed by special commissions to hold courts of Oyer and Terminer and General Gaol Delivery within the counties of the province as occasion arose. For the trial of civil cases two or more justices of the Court of King's Bench held superior terms four times annually in the districts of Quebec and Montreal, and had jurisdiction in cases involving an amount exceeding £10 sterling unless future rights were concerned. Six inferior terms were held annually in each of the two districts by a single judge, for the hearing of cases involving less than £10 sterling. Under certain conditions cases could be removed from the inferior to the superior terms of the court.

The courts of the district of Three Rivers were placed on a somewhat different basis. A provincial judge was appointed for the district, and he and two of the justices of the Court of King's Bench, or any two of them together with either of the chief justices, were constituted a Court of King's Bench for the district, and held, at first two, but later three terms annually for the trial of criminal and civil cases. In 1830[1] the provincial judge became known as the resident judge, and he was made a justice of the Court of King's Bench for Three Rivers. Instead of the provincial

[1] Statutes of Lower Canada, 10 Geo. IV, cap. 22.

court, the resident judge was empowered to hold six inferior terms of the Court of King's Bench within his district. A provincial judge was also appointed for the inferior district of Gaspe, with jurisdiction in civil suits not involving more than £20 sterling. The provincial court of the district of St Francis, established in 1823, was originally given jurisdiction only in civil cases, with an appeal when the issue exceeded £10 to the superior terms of the Court of King's Bench for the districts of Montreal or Three Rivers. In 1830 a Court of King's Bench was established for the district, consisting of the provincial judge and one of the justices of the Courts of King's Bench of each of the districts of Montreal and Three Rivers.

For the greater convenience of the inhabitants of the rural districts, a single judge of the Court of King's Bench was empowered to hold an annual circuit court in each county in the province, the counties of Quebec, Montreal, Orleans and Gaspe excepted, for hearing civil actions in which the claim did not exceed £10. Justices of the peace within each of the districts were required to hold quarterly courts for the determination of 'all matters relating to the conservation of the peace and whatsoever is or may be by them cognizable according to the criminal laws of that part of Great Britain called England.'[1] In 1817 the justices of the peace were empowered to hear certain minor civil cases. A few years later a special court was established, where commissioners appointed by the governor tried cases for the recovery of small debts.

The judicial division of the province and the organization of the courts was much less complicated in Upper Canada. The province retained the division into four districts which it inherited from the Province of Quebec, though the names of the districts were altered. As settlement advanced new districts were formed, and at the time of the union there were in all fifteen districts. In 1794 the legislature began the work of constituting a system of courts adequate to the needs of the province. A single Court of King's Bench was established, consisting of the chief justice and two puisne

[1] Statutes of Lower Canada, 34 Geo. III, art. 34.

justices possessing 'such powers and authorities as by the Law of England are incident to a Superior Court of civil and criminal jurisdiction.'[1] The court was to hold four terms annually, at the place of meeting of the council and assembly of the province. Commissions were issued to the judges to hold courts of assize annually in each of the districts of the province. In 1837[2] the constitution of the court was changed by the addition of two puisne justices possessing the same powers as the former judges. The judges were to sit in rotation, and the quorum was fixed at three except in the absence of the chief justice, when all four were required. In each of the districts of the province a District Court, consisting of one judge or more appointed by commission under the Great Seal of the province, was established in 1794 for hearing actions of contract where the amount at issue was less than £15. The jurisdiction of this court was later extended to actions for the recovery of debts.

Very soon after the formation of the province the need was felt for a Court of Equity. A bill establishing a Chancery Court was prepared in 1802, but it met with certain objections from the British law officers, who held that the lieutenant-governor, as chancellor of the province, was virtually a Court of Equity.

However, in 1837 an act[3] was passed vesting the judicial powers of the representative of the crown as chancellor in a judge to be appointed by His Majesty, and to be known as the Vice-Chancellor of Upper Canada. The vice-chancellor held office during good behaviour, and could be removed by joint address of both houses of parliament, subject to appeal to the king in council. The vice-chancellor was made a member of the Court of Appeal, and his judgments were subject to appeal in the same manner as decisions of the Court of King's Bench. The court was to be held at the seat of government, while its jurisdiction and rules of decision were made similar to those of the Court of Chancery of England.

As early as 1793 the lieutenant-governor was authorized

[1] See the Statutes of Upper Canada, 34 Geo. III, cap. 2, sect. 1.
[2] *Ibid.*, 7 Wm. IV, cap. 1. [3] 7 Wm. IV, cap. 2.

by act of the provincial legislature to create within each district of the province a Surrogate Court for the probate of wills. As in Lower Canada the justices of the peace held their regular courts of Quarter Sessions, but in addition to their regular judicial functions they were entrusted with the framing of local regulations and the duties ordinarily pertaining to a municipal council. The lowest civil jurisdiction was the Court of Requests, in which two or more justices of the peace or special commissioners were authorized to hear minor cases of debt or contract.

The Constitutional Act, by repealing so much of the Quebec Act as related to the appointment of a council, abolished the provincial Court of Appeals, but immediately created a substitute composed of the governor, lieutenant-governor or person administering the government of each province, together with the executive council. The constitution of the court was made subject to amendment by provincial legislation, and each province, accepting the court as established, proceeded to define its powers with greater definiteness. In Lower Canada the composition of the court was particularly defined so as to include the chief justice of the province and the chief justice of the Court of King's Bench for the district of Montreal, who was not necessarily a member of the executive council. The quorum was fixed at five, which should not include the judges of the court from which the appeal was taken. The court had four terms during the year, under the presidency of the governor or lieutenant-governor, or of such person as the governor might appoint. It became customary for each of the chief justices to take charge of cases which came from the lower court in which the other chief justice presided, with the result that a decided ill-feeling was created and that uniformity in the rules of decision in appeal became well-nigh an impossibility. In Lower Canada appeal was permitted in civil cases of more than £20 and where future rights were involved, while it was confined to the question of law when the judgment of the lower court had been founded on the verdict of a jury. The Court of Appeals of Upper Canada was composed of the governor, lieutenant-governor or administrator, or the chief

justice of the province, together with any two or more members of the executive council. Judges of the court below, if members of the Court of Appeals, were allowed to assign reasons for their judgment but not to vote on the decision in appeal. The jurisdiction was more limited than in Lower Canada, being confined to civil cases where the matter in dispute exceeded £100. In both provinces a final appeal to His Majesty in council was permitted in cases where the issue exceeded £500 or where future rights were concerned.

The organization of the courts in Lower Canada, while at first giving apparent satisfaction, did not prove adequate to the demands which arose with the growth of the province. The Court of Appeals, in particular, was made the object of attack. The combination in the one body of judicial and executive functions did not contribute to the successful performance of either. The independence of the judges was compromised by their participation in executive duties, while the lay members of the executive council were not considered competent to act as judges in appeal. In the early thirties several schemes were advanced for the constitution of Courts of Appeals separate and entirely distinct from the executive council.

It was but natural that after peace had been restored the reconstitution of the courts of Lower Canada should receive the attention of Thomson. An ordinance[1] passed by the governor and Special Council in 1840 effected a complete change in the organization of the judiciary. The province was divided into the four districts of Quebec, Montreal, Sherbrooke and Gaspe. The principle of combining original civil and criminal jurisdiction in the one court was abandoned, and a return was made to the organization in vogue prior to the passing of the Constitutional Act. The civil jurisdiction of the Court of King's Bench was, with certain exceptions, transferred to a Court of Common Pleas consisting of nine justices appointed by the crown. The court was organized into four divisions, the first and second consisting of three or more justices for the districts of Quebec and Montreal re-

[1] 4 Vict. cap. 45.

spectively, the third consisting of two or more justices for the district of Sherbrooke, and the fourth consisting of one justice or more for the district of Gaspe. Four superior terms were held annually by two or more justices in each of the divisions of Quebec, Montreal and Sherbrooke, having cognizance of such cases as were formerly heard by the superior terms of the Court of King's Bench. A single justice was competent to hold inferior terms at certain fixed periods. A Court of Queen's Bench, consisting of the chief justice of the province and two puisne judges, was given all the powers formerly vested in the Court of King's Bench in criminal cases. The provincial Court of Appeals was abolished and its jurisdiction vested in the Court of Queen's Bench. Final appeal to Her Majesty in council was permitted in the same manner as under the former constitution.

The relation of the judiciary to the other branches of government has undergone a vast change since the days of the old provinces of Upper and Lower Canada. The independence of the judges in its modern interpretation was entirely foreign to the pre-rebellion period. In fact, an intimate connection was maintained between the judiciary and the executive and the judiciary and the legislative bodies. Three of the eight active members of the original executive council of Lower Canada were judges, while two of these were at the same time members of the legislative council. In later years the two chief justices were members of both councils. In Upper Canada, while the relation between the judiciary and the councils was not at first so intimate, it soon produced the same situation as found in Lower Canada. The judges, nominally appointed by the crown, were selected by the governor or lieutenant-governor, and naturally were chosen from the party friendly to the executive. Primitive colonial conditions did not produce an abundant supply of men capable of properly performing the duties of a judge. The advantages upon which an opportunity to secure the necessary training and qualifications depended were confined largely to the families which composed the government party. In Upper Canada appointments occasionally were made from the English bar, but, with a few distinguished exceptions, the

judges selected from Britain were not such as to commend resort to the motherland. In Lower Canada the necessity of administering Canadian civil law served as a most effective barrier against the importation of judges. Local conditions, political and social, rendered it inevitable that the judiciary should be allied to the party which dominated the executive and legislative councils.

The relation of the judiciary to the legislative assembly was different. Nothing in the Constitutional Act disqualified judges from election to the House of Assembly, and in both provinces they were elected to the legislature. In Lower Canada the judges who sat in the assembly, though of French birth, voted with the English minority. The manifest disadvantages which resulted from the necessity of a judge canvassing for popular support appealed with redoubled force to the majority in the assembly. The independence of a judge was unquestionably seriously compromised by the necessity of preserving popular sympathy and approval. The result was that in Lower Canada judges were disqualified by statute from sitting in the House of Assembly.[1] In Upper Canada the situation was reversed. Judge Thorpe, who had been elected to the assembly[2] through his popularity with a certain class of the community and his hostility to the government, caused the executive undoubted embarrassment. Instead of disqualifying judges—a step which the assembly might not have been prepared to take—the governor interfered and recalled Thorpe. Many years later, however, an act was passed in Upper Canada rendering judges of the Court of King's Bench ineligible to sit in the House of Assembly.

It was with greater difficulty that the connection between the judges and the executive and legislative councils could be broken. The appointment of judges was a prerogative of the crown, and the crown insisted, as in the case of Justice Kerr in 1832, that no judge should be suspended until it became satisfied that there was adequate cause. The assembly at first sought to obtain control over the judiciary by resort to impeachment. Impeachment, however, proved a cumbersome and ineffective expedient, especially when the

[1] See p. 164.

[2] See p. 184.

decision was to be rendered by the legislative council. The assembly then directed its energies to securing control over the funds from which the salaries of the judges were paid, in order that by withholding their salaries they might exercise an effective recall. The only choice of the judiciary seemed to be between dependence on one or other political party. Under these circumstances it is not surprising that there should have been but little popular confidence in the independence of the judges. In Upper Canada, where the situation was less acute, a compromise was reached by which the judges were declared to hold office during good behaviour, but were rendered liable to be removed by joint address of the legislative council and assembly, subject to appeal to the king in council.[1]

In Lower Canada promises were given of a satisfactory basis of agreement being reached. The crown expressed its intention, after the investigation into Canadian affairs in 1828, of not appointing judges to either of the councils. This did not satisfy the demands of the assembly, and a bill disqualifying judges from sitting in the executive and legislative councils was passed in 1832 and reserved for the royal assent. The secretary of state approved of the principle of the bill, but took exception to the claims of the assembly in appropriating certain of the crown revenues for the support of the judges. The bill was disallowed, and in the growing passion of the time it became impossible for the opposing factions to find a common ground for agreement. The elevation of the judges to a position of dignity and independence was a task reserved for the statesmanship of the Union period.

The Legislative Council

Legislative authority in the Canadian provinces was vested by the Constitutional Act in the governor or lieutenant-governor 'by and with the Advice and Consent of the Legislative Council and Assembly.' The usual right of the governor to refrain from assenting to any legislation was preserved, while the legislative supremacy of the king in council was maintained by the provision that any bill, even

[1] See the Statutes of Upper Canada, 4 Wm. IV, cap. 2.

after having received the governor's assent, could be disallowed within two years of the time of its receipt by the colonial secretary. Restrictions were placed on the authority of the colonial legislature to enact laws respecting certain special subjects. The Constitutional Act required that any provincial legislation respecting the clergy of the Church of Rome, the clergy reserves, the erection of parishes and presentation of incumbents, the enjoyment of religious freedom, or affecting the king's prerogative in granting the waste lands of the crown, should lie before both houses of the imperial parliament for at least thirty days before receiving the royal assent. Likewise the provincial legislatures were restrained from passing any enactment which would interfere with the operation of British statutes regulating the trade and commerce of the empire.

The legislative council consisted in Upper Canada of not less than seven members and in Lower Canada of not less than fifteen members appointed by the governor or lieutenant-governor of each province. None but British subjects over the age of twenty-one years were eligible for appointment to the council. In Upper Canada doubts arose regarding the citizenship of certain people who had emigrated from the United States, and an imperial statute was passed in 1826 rendering persons naturalized in the province eligible for appointment to the legislative council. Members of the council held their seats for life unless they took the oath of allegiance to a foreign power or resided outside the province for a specified term of years without the consent of the crown or its representative. In order to furnish it with fitting dignity, His Majesty was authorized to annex to hereditary titles of honour in the provinces the right of being summoned to the legislative council. In this manner the influence of the crown was to be preserved and the council was to be brought more into harmony with the traditional ideal of an aristocratic upper chamber. The council was given authority to determine all questions relating to its own constitution.

The speaker of the legislative council was appointed by the governor or lieutenant-governor, and, as a general rule, did not hold office for a long consecutive period. In Lower

Canada an interesting question arose regarding the manner in which the speaker should vote on divisions in the council. The British law officers in 1815 expressed an opinion that the speaker was entitled to a deciding vote should there be an equal division after he had already voted. This rule was followed until 1833, when the council resolved that the speaker should have only one vote. The question was again referred to the colonial secretary, and this time it was decided that the speaker should have only a casting vote.

The legislative council did not succeed in attaining the position of dignity and influence for which the fathers of the constitution so carefully provided. The crude conditions of a primitive colonial settlement afforded no support for an hereditary aristocracy. The comparative equality of possessions, and the lack of any estate adequate to the support of the necessary dignity of office, served as an effective check on the development of a colonial peerage. The colony was lacking in every element necessary to the maintenance of an hereditary aristocracy. It possessed few traditions, and they, such as they were, were not of the kind to be appropriated for the support of an aristocracy; its families had not acquired the necessary wealth, and, above all, the social conceptions which the conditions of its development imposed were essentially democratic. At the time of the passing of the bill those who had any knowledge of the life of the colony vigorously opposed resort to the principle of hereditary appointments. The future demonstrated the wisdom of their judgment, for at no time was the right to a seat in the legislative council attached to any title of honour in either province.

The legislative council, as was the case with the executive council, suffered from its complete subjection to the representative of the crown. It became degraded into the mere tool of the governor. Appointments were made with the sole purpose of adding to the influence of the crown. Only such legislation as the executive approved would the council permit to pass. Likewise biils proposed by the council which would excite either the fear or the jealousy of the assembly were conveniently suspended. Only such legislation as was absolutely necessary to the interests of the province, or was

of such a neutral character as not to win the support or arouse opposition of either party, was permitted to become law.

Even among the friends of the administration the legislative council was not highly regarded. The best talent in the province refused to accept the privileges of admission to its membership. In 1820 Lord Dalhousie complained that it was with difficulty that proper persons could be secured to serve on the council. By opponents of the administration in both provinces the council was regarded as the source of all political maladies. The complete subjection of the legislative council to the authority of the executive paralysed the legislative power of the popular assembly. It then became the purpose of the assembly to free the council from the domination of the governor and to make it responsive to public opinion in the province. Moreover, the combination of judicial and legislative functions which resulted from several of the judges occupying seats in the council was the subject of complaint. The committee of the British parliament appointed to investigate the affairs of Lower Canada in 1828 recommended that judges should not be appointed to the council, and that the composition of the council should be strengthened and rendered more independent of the governor.

The scheme of the legislative assembly of Lower Canada for the reform of the council took definite shape in an address to His Majesty during the session of 1833. It proposed that the council should be elected by landholders possessing property with an annual income of ten pounds in the country districts and twenty pounds in the cities. Members of council should be thirty years of age, and should have resided in the province for at least fifteen years. A property qualification should be required of the yearly value of one hundred pounds in the country and two hundred pounds in the cities of Quebec and Montreal. The duration of the council was to be limited to six years, and one-sixth of the members were to retire each year. The system of representation adopted, based on the division into cities and counties, would have made the membership of the council equal to one-half of that of the assembly. The

judges and clergy were declared ineligible for election, and persons elected at the same time to both council and assembly were to be permitted to choose for which house they should sit.[1]

This reform was strenuously opposed by the council, who feared that an elective council would at once imperil the royal prerogative and the British connection of the province, and would jeopardize the rights of the British ministry which could never be represented in the assembly. This view was shared by the colonial secretary, Lord Goderich, who regarded the reform as 'inconsistent with the very existence of Monarchical Institutions.' Although the assembly still pressed for a change in the constitution of the council, nothing was done to satisfy its demands.

The legislative council occupied a distinctly anomalous position in the government of the Canadian provinces. Normally, its function as a second chamber would have been to provide a check on hasty and unfair legislation and to extend its protecting care over interests not represented in the popular assembly. In the case of the Canadas there was in the creation of an appointed council the added motive of safeguarding the authority of the governor, the royal prerogative and British connection by assimilating, as far as possible, the constitution of the colonies to that of the motherland. Unfortunately, the similarity of constitutions applied only to the outward form. The exclusive privileges and special training which fitted the peers of Britain for effective public service found no counterpart in the public life of the Canadian provinces. The Canadian councillors were not inspired by any such public interest as were the lords in England. Their appointment by a governor interested in a certain class of legislation destroyed their independence. The council gradually became simply the executive acting in its legislative capacity. The result was that the influence of the council tended to defeat the very purposes for which it was created. The exercise of its power of protecting minorities and interests not represented in the assembly resulted in a deadlock, and heaped upon the council the odium which the

[1] See the Journals of the House of Assembly, Lower Canada, 1833, p. 570.

suspension of the legislative function occasioned. Its complete subjection to the dictates of the chief executive, who, with few exceptions, was compelled to assume the leadership of a political party, destroyed popular confidence in its integrity as a branch of the legislature. To the opponents of the government it symbolized all that was most objectionable in the constitution, while the governor and the crown were, in no small measure, held responsible for the perpetuation of the constitutional maladies with which it was popularly associated. The popular discontent which was occasioned by the conduct of the legislative council, instead of enhancing the esteem in which the crown was regarded or strengthening the bond of British connection, rather encouraged and hastened the appeal to armed resistance.

The Houses of Assembly

The Constitutional Act created a House of Assembly within each of the provinces of Lower and Upper Canada. The governor or lieutenant-governor of each province was authorized to divide the province into districts for the purpose of electing representatives. The Province of Upper Canada was divided by Lieutenant-Governor Simcoe in July 1792 into nineteen counties, which were to return sixteen members to the assembly. In 1798 a new division was made of the counties, while two years later the representation was increased to nineteen. In 1808 the membership of the assembly was further increased to twenty-five. An attempt was made in 1820[1] to introduce the principle of representation by population, when each county having a population of a thousand was given one representative, and when two seats were assigned to a county possessing 4000 inhabitants. County towns possessing a population of a thousand were entitled to one member, while, at the same time, provision was made for the representation of a university whenever one should be established. A county possessing a population of less than a thousand was to be attached for electoral purposes to the next adjoining county having the smallest number of inhabitants. The result of this reform was that

[1] Statutes of Upper Canada, 60 Geo. III, cap. 2.

the assembly which met in 1821 contained forty members, representing twenty-seven electoral districts.

In May 1792 Alured Clarke issued a proclamation dividing Lower Canada into twenty-seven electoral districts, returning fifty members to the assembly. The settlement of the Eastern Townships, and the rapid increase in the population of the cities, soon rendered this division unequal. The proclamation could be amended, however, only by an act of the provincial legislature or by the intervention of the imperial parliament. For political reasons the majority in the assembly did not take kindly to any scheme of redistribution which, by increasing the representation of the new districts, would add to the strength of the government party in the house. The imperial parliament did not consider it wise to interfere in a question which the provincial parliament was competent to settle. By a provincial statute of 1829,[1] however, redistribution was made by which the province was divided into forty counties, while the divisions of the cities and towns remained unchanged. At the same time the basis of population for representation in force in the upper province was, in so far as it related to counties, introduced into Lower Canada. The cities of Quebec and Montreal were each given four members, the borough of Three Rivers two and the borough of William Henry one. The fourteenth parliament, which assembled in 1831, contained eighty-four members.

The qualifications of the electors for both provinces were fixed by the Constitutional Act. The franchise was confined to persons of twenty-one years of age who were natural-born subjects of His Majesty or who had been naturalized by act of the British parliament, or who had become British subjects by virtue of the cession of Canada. A property qualification was demanded of all electors. In the counties it was the ownership of lands or tenements of the yearly value of forty shillings, and in the towns the ownership of a house and lot of the yearly value of five pounds or the payment of an annual rental at the rate of ten pounds sterling. Emigration from the United States into Upper Canada raised various questions regarding the right of these new subjects to the

[1] 9 Geo. IV, cap. 63.

franchise. A provincial statute of 1800[1] made it necessary that persons who had resided in a foreign state in order to qualify as electors should, in addition to taking the oath of allegiance, have been resident in British dominion for four years previous to the next ensuing election and for seven years previous to future elections. This provision was retained in a general act of 1824[2] relating to the qualification of voters, but was suspended in 1834.[3]

Qualification for election to the House of Assembly was different from the qualification of voters. No property holding was required of members of the assembly. Members of the legislative council, ministers, priests or teachers of any form of religious faith were excluded, while the same conditions regarding naturalization were required as in the case of electors. In so far as it applied to the election of members of the House of Assembly of Upper Canada, the Constitutional Act was amended in 1826[4] so as to render eligible all persons naturalized by virtue of an act of the provincial legislature. In both Lower and Upper Canada the question of the eligibility of judges was the subject of much discussion. In the lower province, after the assembly had undertaken to expel a judge by its own vote, an act was passed declaring judges of the Court of King's Bench to be incapable of sitting in the House of Assembly.[5] A similar course was followed in Upper Canada, while at the same time it was declared that judges of the District Court, members of the Executive Council and the chief administrative officers should be disqualified, though their appointment was not to act as a bar to re-election.[6]

Conditions in Upper Canada were such as to render it necessary to give the members of assembly some remuneration. By an act passed in 1792[7] each member became entitled to a sum not exceeding ten shillings per day for each day of attendance as certified by the speaker. The money for the payment of members was raised by a tax levied on

[1] 40 Geo. III, cap. 3.
[2] 4 Geo. IV, cap. 3.
[3] See 4 Wm. IV, cap. 14.
[4] Imperial Statutes, 7 Geo. IV, cap. 68.
[5] See 51 Geo. III, cap. 4.
[6] 7 Wm. IV, cap. 114.
[7] 32 Geo. III, cap. 3.

householders in their respective counties or ridings. The basis of payment was altered in 1838,[1] when each member was allowed £50 with an additional amount for travelling expenses. In case the session continued for less than thirty days the indemnity was reduced to £25. Deductions were made in the case of members who were absent without the consent of the house. In 1812 resolutions were introduced in the assembly of Lower Canada favouring the principle of the payment of members, but it was not until 1833 that any allowance was made. Each member of the assembly was granted two shillings per day with an extra allowance based on the distance of his residence from the seat of government, while the funds were derived from the unappropriated moneys in the hands of the receiver-general of the province.

The organization of the House of Assembly as an efficient instrument of government required the appointment of certain officers and the granting of certain special privileges. The speaker of the House of Assembly was elected at the beginning of each parliament or when a vacancy occurred during the term of a parliament. Hence the procedure followed in connection with the election of a speaker was such as to maintain the right of the crown to approve or disapprove of the assembly's choice. The speaker not only presided over the deliberations of the house, but served as the means of communication between the crown and the assembly. It was the usual custom for the house on its first assembling after an election to attend on the governor or lieutenant-governor in the council chamber, and to receive His Excellency's commands to elect a fit person as speaker. The election then proceeded, and the person chosen was presented for the approbation of the representative of the crown. In Lower Canada in 1827 the assembly elected as speaker Papineau, who had been speaker during six preceding parliaments, but had actively opposed the administration in the general election. Lord Dalhousie refused his approval and disallowed the choice. The assembly in a series of resolutions insisted that their speaker should be a person of its free choice 'independently of the will and pleasure of

[1] Statutes of Upper Canada, 1 Vict. cap. 17.

the Person entrusted by His Majesty with the administration of the local government,' and declared the approval of the governor to be only a formal proceeding founded on usage. This procedure was interpreted by the governor as an invasion of the prerogatives of the crown, and the assembly was prorogued. This definite issue brought the question to the attention of the Colonial Office, and Sir George Murray instructed the lieutenant-governor, Sir James Kempt, that in case he should have to choose between permitting Papineau to sit as speaker without his approval and proroguing the assembly, he should, after protesting against any invasion of the rights of the crown, abstain from exercising the prerogative of prorogation in consideration of the great inconvenience which it would cause to the province.[1] A satisfactory compromise was reached, and in the session of 1828 Papineau was again presented and confirmed in his position by Sir James Kempt.

Different practices were followed in the Canadas regarding the tenure of office by the speaker. From the time of its constitution until its suspension in 1838, the House of Assembly of Lower Canada had only four speakers, and of these, two, Panet and Papineau, held office during forty-one years. In Upper Canada the changes of speakers were much more frequent; and on only two occasions was the speaker of one parliament re-elected as speaker of the next succeeding parliament. In the last parliament of Upper Canada each session saw a change in the office of speaker. The cause for the different customs is found in the difference in political conditions. The same party held control of the House of Assembly of Lower Canada from its beginning until the rebellion. In Upper Canada the balance changed frequently. Likewise, where public opinion was more evenly divided the complexion of the house was greatly altered from parliament to parliament. It was accordingly more difficult for any individual to establish a permanent leadership of the house.

In the absence of the definite parliamentary organization which British practice has associated with responsible govern-

[1] See Murray to Kempt, September 29, 1828: Canadian Archives, Q 182 A, p. 93.

ment and the cabinet system, the speaker became virtually leader of the majority in the House of Assembly. He was elected speaker by virtue of the influence which he possessed as leader of the majority in the house. Events in Canada, and the more extensive experience of the United States, demonstrate that where the executive is not responsible to the popular representatives, the speaker of the popular house must become a party politician. The British House of Commons was just at this time becoming persuaded of the necessity of removing the speaker from political activity. From the rejection of Manners Sutton in 1835 can be noted the elevation of the speakership of the British House of Commons to a position of independence. The fact that in Canada, and in particular in Lower Canada, the majority of the popular house was opposed to the executive aggravated the situation. Not only did the demands for waging active political warfare become more imperative, but freedom from responsibility removed from the leaders of the house certain restraints which would have dulled their political weapons. It was doubtless with this situation in view that Lord Dalhousie appointed Papineau to the executive council in 1820, and it is equally certain that it was for the same reason that Papineau declined, after being admitted to the council, to attend to the duties of the office. Parliamentary conditions compelled the speaker to assume the leadership of a political party. Not until Lord Sydenham introduced the machinery of responsible government was the independence of the speaker secured.

The other permanent officers of the House of Assembly were the clerk of the house and the sergeant-at-arms. The duties of the clerk were to record the proceedings of the house, to sign its orders, to endorse its bills and to read whatever the house should require. The sergeant-at-arms was entrusted with the preservation of order within the house, and the execution of the commands of the house issued by the speaker. The office of the sergeant-at-arms came into particular prominence in connection with enforcing the privileges of the House of Assembly.

The necessity of maintaining a proper dignity by the

popular branch of the legislature, and of preserving freedom in the performance of its duties, resulted in its securing special rights and the proper authority for enforcing them. The first duty of the speaker of the assembly was to demand for the house the enjoyment of the privilege of its proceedings receiving a favourable construction, of freedom of access to the representative of the crown, of freedom of debate and of freedom from arrest. In Upper Canada the lieutenant-governor promised that 'the Members of the House shall enjoy freedom of debate, access to the person of His Excellency, and be privileged from arrest.'[1] In Lower Canada the speaker claimed in the name of the assembly 'the freedom of Speech, and generally all the like privileges and liberties as are enjoyed by the Commons of Great Britain.'[2] The reply of Alured Clarke was significant: 'The House may depend on being allowed the full exercise and enjoyment of all just Rights and Lawful Privileges.'[3]

The question of the extent to which a colonial legislature, and particularly the assembly of Lower Canada, could lawfully exercise the privileges of the British House of Commons was made the subject of a specific reference to the British law officers in 1815. To the question whether under the Constitutional Act the assembly of Lower Canada could claim any privileges, the reply was given that the members of assembly were entitled to 'such Privileges as are incidental to, and necessary to enable them to perform their functions in deliberating and advising upon, and consenting to laws for the peace, welfare and good Government of the Province.'[4] They were further of opinion that a colonial legislature was not entitled to all the privileges belonging by the *Lex Parliamentaria* to the House of Commons. The king by his charter could not grant such powers, 'and though Parliament might, if it should deem it expedient, bestow them, yet, unless it has so specifically done, such powers cannot belong to them as incident to their

[1] Journals of the House of Assembly, Upper Canada, September 18, 1792.
[2] Journals of the House of Assembly, Lower Canada, December 20, 1792.
[3] *Ibid.*
[4] See the Canadian Archives, Q 134, pt. 1, p. 127.

Creation and Constitution.'[1] The granting to the assembly of Lower Canada of the entire privileges of the imperial House of Commons, when followed to its logical conclusion, would have conferred on the legislative council judicial powers which would have conflicted with certain clauses of the Constitutional Act. The sovereignty exercised by the imperial parliament distinguished it from a subordinate legislature and rendered certain of its privileges inapplicable to a colonial legislature. The law officers on this occasion undertook to enumerate the privileges which were incidental to the constitution of the assembly of Lower Canada, and included personal liberty, freedom from arrest in civil cases, a power to commit for acts of contempt, the freedom of debate upon the subjects of the laws to be enacted or considered, the power of expelling a member convicted of a crime, and the right to regulate and order their own proceedings consistently with the statute which constituted them.

In both Upper and Lower Canada the guarantee of personal liberty was demanded as a privilege. In 1835 Philippe Aubert de Gaspé, who had threatened a member of the assembly of Lower Canada with violence, was arrested and confined to gaol by order of the house. The right of personal liberty was extended so as to excuse members of the assembly from sitting on juries during the session of the house.

Freedom from arrest was a privilege frequently demanded by the assembly. An interesting case arose in this connection in Lower Canada in 1793. John Young, a member of the house, was arrested on a writ sent out by Panet, the speaker of the assembly, acting as advocate for the party instituting the proceedings. The speaker was declared guilty of a breach of the privileges of the assembly, and duly presented his apologies to the house. The exercise of this privilege was made applicable, as in the case of Louis Charles Foucher in 1808,[2] to the service of a writ of summons on a member of the assembly while attending to the duties of the house. The assembly attempted to extend this privilege

[1] See the Canadian Archives, Q 134, pt. 1, p. 129.

[2] See the Journals of the House of Assembly, Lower Canada, February 16, 1808.

to criminal cases. Bédard, one of the leaders of the majority in the House of Assembly, was arrested and imprisoned for treasonable practices in 1810 on a warrant of the executive council. He was confined to gaol during the session of 1811, and the assembly was inclined to insist on his release as a matter of privilege. Considering the offence as criminal, Sir James Craig refused to admit the question of privilege, and, on account of these pretensions, kept Bédard in prison longer than he otherwise would have done.

Freedom of debate was threatened from one quarter in particular. The attitude of the governors of Lower Canada, on certain occasions, was considered by the assembly a breach of their privilege. The tirades on the conduct of the assembly, which were the features of Sir James Craig's speeches at the closing of the parliamentary sessions,[1] were designing attacks on the freedom of that house, and were resented as a violation of their privileges. Again in 1820 the assembly took exception to an address delivered by the Duke of Richmond in which the conduct of the house was censured.

The assembly also enjoyed the power of punishing acts of contempt towards the house, and also insisted on determining the character of an offence which constituted a contempt. In general any act showing disrespect for the assembly was regarded as a contempt. The newspapers were among the chief offenders, and their editors were frequently summoned to the bar of the house. Less discrimination was manifested in Upper Canada, where even members of the assembly were committed for contempt.[2]

In addition to the privileges formally claimed by the speaker, the assembly exercised control over questions relating to its own constitution. The trial of controverted elections was a function assumed by the assembly of each province. Prior to 1805 the procedure had been to refer election petitions to a committee of the whole house, where they were dealt with according to the requirements of the particular case. In 1805 the parliament of Upper Canada passed an act,[3] which three years later was adopted in principle by Lower

[1] See p. 162. [2] See the case of Willcox in 1808, p. 185.
[3] Statutes of Upper Canada, 45 Geo. III, cap. 3.

Canada, regulating the trial of controverted elections. Proceedings were instituted by a petition signed in Lower Canada by two electors and presented within fourteen days after the meeting of the assembly. The House of Assembly, the member whose election was contested excepted, was constituted a court to proceed with the trial of the charges contained in the petition. The act of 1805 was repealed in Upper Canada in 1824,[1] when the trial of election petitions was vested in a special committee of eleven selected by a complicated process of elimination. A new system was introduced into Lower Canada in 1834.[2]

The House of Assembly also claimed the privilege of determining the qualification of its own members. In Lower Canada in 1801 the house expelled Charles Baptiste Bouc, who had been convicted before the Court of King's Bench of certain fraudulent practices. Bouc was in two succeeding elections returned to the house, and again expelled after each election. The assembly virtually confessed its inability to maintain its privilege in this case by resorting to an act of parliament for the disqualification of Bouc. Again in 1805 the assembly of Lower Canada declared one of its members, Ezekiel Hart, a Jew, incapable of sitting or voting in the house. Nothing in the Constitutional Act referred to the disqualification of Jews, yet the assembly contended, and with a degree of justification, that the oath required of members of assembly taken on the New Testament would not be binding on a strict observer of the Jewish rites. By resolution of the house Hart was expelled. Two years later the assembly by the same process expelled P. A. de Bonne, for the reason that he was a judge of the Court of King's Bench. In this case the assembly unquestionably exceeded its authority, for by no law were judges disqualified from sitting in the assembly. The conduct of the assembly on this occasion resulted in their dissolution by Sir James Craig. The wisdom of excluding judges from the assembly was admitted, and in the following year legislation was secured for that purpose. The privilege of the House of

[1] Statutes of Upper Canada, 4 Geo. IV, cap. 4.
[2] Statutes of Lower Canada, 4 Wm. IV, cap. 28.

Assembly, however, could not be extended to justify the assumption of the power of legislation. In Upper Canada this privilege was exercised with greater caution. In 1810 James Wilson and John Roblin were expelled on account of being preachers and coming within the specific disqualifications imposed by the Constitutional Act. The expulsion of Mackenzie in 1832,[1] and his disqualification, demonstrated that this assembly was prepared to go to extremes unwarranted by circumstances. The extent to which this privilege could be exercised without infringing on the legislative power of parliament became a direct issue in the case of Dominique Mondelet in 1832. The assembly declared Mondelet's seat vacant on account of his having accepted an office of emolument under the crown. Lord Aylmer refused to issue a writ for a new election, and the case was referred to the British authorities. The colonial secretary considered that the assembly had overstepped its privileges. He pointed out that while the House of Commons in England had been permitted to determine the degree of criminality which should justify expulsion, it had never by resolution, or without the consent of the other branches of the legislature, made laws relating to the qualification or disqualification of candidates.

The privileges of the House of Assembly were supported by powers adequate to enforce them. Minor breaches of privilege were met with a warning or a reprimand. The more serious offences were dealt with, in the first instance, by issuing an order to the sergeant-at-arms for the apprehension of the accused. Should the party be adjudged guilty of a breach of privilege, a warrant was issued by the speaker of the House of Assembly and directed to the sheriff of the district in which parliament was held, ordering him to commit the prisoner to gaol. A person so committed was not entitled to receive the benefits of a writ of *habeas corpus*, and, unless released by order of the speaker of the house, remained in gaol until the prorogation of parliament. The power of the assembly to commit to gaol was questioned by Chief Justice Scott in the case of Robert Nichol in Upper Canada in 1812, but the issue was complicated by a technical defect in the

[1] On the expulsion of Mackenzie see p. 344.

speaker's warrant.[1] In this case the chief justice undertook to issue a writ of *habeas corpus* releasing Nichol, and brought on himself the condemnation of the House of Assembly. The power of expulsion gave the assembly a certain measure of control over its own members, but too little to make it an effective means of enforcing its orders. The assembly could not, as in the case of Bouc and of Robert Christie in Lower Canada, prevent the re-election of the member expelled. The power of disqualification could be exercised by parliament alone. A further and most effective check on the power of expulsion existed in the fact that the order for a new election was issued by the governor and not, as in England, by the speaker of the assembly. The assembly might expel, but its authority stopped short at creating a vacancy. Nevertheless, the power of commitment proved adequate to enforce the observance of the privileges of the assembly.

A most important right of the British House of Commons, claimed and assumed by the House of Assembly of Lower Canada, was the power of impeachment. The opinion of the law officers of the crown on the privileges of the House of Assembly already referred to by implication, denied the right of the assembly to impeach and the right of the council to adjudge such impeachment. Nevertheless, during the session of 1814 the assembly prepared articles of impeachment against Jonathan Sewell, the chief justice of the province, and James Monk, the chief justice of the Court of King's Bench for the district of Montreal. They charged that the chief justices had been instrumental in bringing into force 'Rules and Orders of Practice' of the courts which were repugnant to the laws of the province and which infringed on the legislative authority of the parliament of the province. They charged that Chief Justice Sewell did 'by false and malicious slanders against His Majesty's Canadian Subjects, and the Assembly of this Province, poison and incense the mind of Sir *James Craig*, being Governor in Chief of this Province, against them, and mislead and deceive him in the discharge of his duties as such Governor.'[2] Chief Justice

[1] See the Canadian Archives, Q 316, p. 281.

[2] See Appendix F to the Journals of the House of Assembly, Lower Canada, 1814

Monk was accused of having sat in judgment on cases in which his advice had previously been given. The motives which prompted the impeachments were distinctly political, yet it is not without interest that the French-Canadian party should resort to the weapons of British constitutional procedure in waging its political warfare.

The right of impeachment assumed by the assembly was at once denied by the legislative council. Such a right, the council claimed, was vested in the entire people and could not be exercised by the assembly, which represented only a part of the people. At the same time the council disclaimed any right to the power exercised by the House of Lords of determining cases of impeachment. The articles of impeachment, together with the papers relating to them, were transmitted to the colonial secretary, and the entire evidence was submitted to the king in council. The assembly decided to prosecute the charge before the Privy Council and appointed an agent for that purpose, but was prevented by its inability to provide funds for his expenses. The chief justice, on the other hand, at the expense of the British government appeared in his own defence. The king, by an order in council, decided that the charges were unfounded, and particularly emphasized the impossibility of liberating the governor from responsibility for his conduct, even when founded on the advice of his executive council.

Another case of impeachment, which better illustrates the procedure, arose in 1817. Charles Louis Foucher, justice of the Court of King's Bench for the district of Montreal, was accused by the House of Assembly in articles of impeachment of gross malversation in office. The legislative council again protested against the assumption by the assembly of the right of impeachment. The case was referred to the Colonial Office, and the decision was reached by Lord Bathurst that

> in this and in all similar cases of impeachment by the Legislative Assembly the adjudication of the charges preferred against the party accused shall be left to the Legislative Council. Under such an arrangement His Royal Highness feels no disposition to question the right of the Assembly to submit Articles of Impeachment

> against any individual whose public conduct may appear to them deserving of animadversion, nor does His Royal Highness see any objection in such case to a compliance with the Address of the Assembly for the suspension of the obnoxious individual, since the means of ascertaining the validity of the charges being at hand, the party accused can sustain but little injury from a temporary suspension if innocent, and if ultimately pronounced to be guilty, the advantage of an immediate suspension is unquestionable.[1]

This dispatch seemed to impose on the legislative council functions for which its constitution made no specific provision. The question of procedure at once arose, and brought forth varying opinions from the colonial law officers and from the judges. A further and more important difficulty was raised by Sir John Sherbrooke. The governor pointed to the evils which might arise should it be left to his discretion, or should it be made compulsory on him to permit the trial of impeachments to take place without a previous reference to the British government.

> For—this important privilege being once given to the Council—if it be left to the Governour of the Colony to judge in what cases they shall be allowed to exercise it, there will be frequently a risque of his being embroiled with the Legislature ; and if it be compulsory on him there will be then the still greater danger of Impeachments being brought to the Assembly and adjudged by the Council from party feelings in both those bodies ;—when it would have been highly desirable that such proceedings should have been checked before coming to trial.[2]

He strongly recommended that the decision as to the expediency of permitting an impeachment to be brought to trial should rest with His Majesty's government. As a result of these representations the decision of the British government was revised, and Lord Bathurst expressed the pleasure of the Prince Regent that the Assembly

[1] Bathurst to Sherbrooke, July 7, 1817; Canadian Archives, G 9, p. 190.
[2] Sherbrooke to Bathurst, April 18, 1818; Canadian Archives, Q 151 A, p. 191.

> should proceed to address without delay such documentary evidence as they consider adequate to support the charges which they have brought against Mr Foucher. That it is further His Royal Highness's pleasure that Copies of such charges, together with the proofs of them, should be submitted to Mr Foucher for his reply, and that his defence should be communicated to the Assembly for their rejoinder, and that the whole of the documents should then be transmitted to this Country for the adjudication of His Royal Highness in Council.[1]

The assembly did not undertake to prosecute the charges, and, on the direction of Lord Bathurst, Foucher was restored to his former position in the Court of King's Bench.

Although there were no further cases of impeachment in Lower Canada, the establishment of a tribunal for the trial of impeachments was frequently considered. In a bill introduced in the assembly in 1832, designed to secure the independence of judges, the legislative council was given authority to try cases of impeachment, not only against the judges, but against any public official for a misdemeanour or malversation of office. While the bill did not become law, Lord Goderich, the colonial secretary, expressed his willingness to confer on the council the power of determining such charges as the assembly should bring against the judges.

The impeachment as employed in Lower Canada was merely a political weapon. Through its use the assembly hoped to gain control over the conduct of officials appointed by the executive. When, as in Britain, other expedients were devised to secure for the assembly the control which it desired, the impeachment was definitely abandoned. Hence, with the introduction of the principle of responsible government, the antiquated process of impeachment was consigned to a permanent resting-place.

The legislative procedure of the Canadian parliaments was modelled on that of Great Britain. Public bills were introduced by a motion for leave, by a motion to appoint a committee to bring in a bill, or by an order of the house on the report of a committee. Private bills required to be intro-

[1] Bathurst to Sherbrooke, April 8, 1818: Canadian Archives, Q 151 A, p. 191.

duced by a petition presented by a member and seconded. In Lower Canada the duality of language introduced a new problem of procedure. The regulations published by the assembly in 1793 required that bills relative to the criminal laws of England in force in the province, and to the rights of the Protestant clergy, should be introduced in English, while bills relating to civil rights should be introduced in French. All bills presented were translated, and were read in both languages.

As in Britain, special conditions attended the consideration of money bills. No petition for the expenditure of money for the public service could be received unless it had been recommended by the governor. At the same time the assembly claimed that all grants of aid were the sole gift of the assembly, and that bills relating to supply should originate in the lower house and were not subject to amendment by the legislative council. In Lower Canada the issue arose as to what constituted a money bill. In 1793 the legislative council passed a bill providing for the appointment of returning officers, and imposing certain penalties for neglect of duty; but on its second reading in the assembly it was set aside and a new bill of the same tenor introduced, on the ground that as it laid a charge on the people, it should originate in the assembly. The council, though accepting the bill and yielding to the assembly the right to regulate bills of supply, disputed the application of such a principle to the imposition of penalties. In this view they were supported by the colonial secretary, and the assembly at a later period admitted its claim to have been excessive.

It was the ambition of the legislative assembly to become the dominating factor in the government of the provinces. In Lower Canada resort was made to impeachment, but this applied only to occasional and exceptional conditions. The control of the payment of public servants presented a much more effective means of asserting the supremacy of the assembly in the administration of the government. Hence it was that the contest between the executive and legislative authorities, in Lower Canada especially, centred around the right of appropriating the public revenue.

The position of the crown has already been stated.[1] It claimed the right to dispose of its hereditary and territorial revenues, and of the proceeds of duties levied by imperial statutes and not specifically transferred to the provinces. In 1810, in an address to the king, the House of Assembly offered to raise all the revenue required for the public service. The object of the assembly was obviously to obtain an effective control over the public service, and, on the advice of Sir James Craig, the offer was not at the time accepted. As the interests of the colony expanded the cost of the administration of government increased out of proportion to the growth of the crown revenue. The result was that in 1817 the government felt compelled to state the case to the assembly, and to ask an aid to supply the deficiency between the crown revenues and the expenditure. The request for such an aid in no manner implied that the crown had surrendered its right to appropriate its own revenues. The crown submitted an estimate to the assembly, and in the following year a sum was voted to meet the deficiency. In 1821, however, the assembly followed a new procedure. A bill of supply was introduced containing appropriations, item by item, for each office in the public service. The rights of the crown vanished, and in their place was substituted the control of the assembly over all civil appointments. Nor was the legislative council slow to perceive the claims involved in the bill, and soon disposed of it as an unconstitutional invasion of the royal prerogative. In 1824 Sir Francis Burton, who was conducting the administration during the absence of Lord Dalhousie, considered that he had effected a successful compromise in a new bill of supply. The preamble disclaimed on the part of the assembly any authority to appropriate the revenue of the crown, while the enacting section of the bill proceeded to appropriate all the revenue irrespective of source. Technically the bill did not interfere with any right of the crown, yet when considered in the light of the motives of the assembly, there was reason to regard it as an invasion of the crown's prerogative. The measure was disallowed by the king, and a deadlock resulted. The special committee appointed to consider the

[1] See p. 441.

affairs of Canada recommended in 1828 that the control of the revenue should be vested in the assembly, on condition of its granting permanent provision for the administration of justice and the expenses of civil government. With this idea in view the funds arising from the Quebec Revenue Act were in 1832 placed at the disposal of the legislative council and assembly. The necessary guarantee of a permanent supply was not given, and this last attempt at an agreement failed.

The assembly claimed the power of appropriating the public revenues as an inherent right in the constitution of a British representative assembly. That such a right belonged of necessity to popular assemblies may well be questioned. Special historical conditions, which did not exist in Canada, were responsible for the measure of control exercised by the British House of Commons over the appropriation of the revenue. Such a claim on the part of the assembly was constitutionally invalid, in the light of the statutory rights of the British crown. The assembly, too, had interpreted the request for aid in 1817 as a virtual surrender by the crown of its control over the public revenue. The constitutional right of the crown, through its representative, to appropriate the revenue of the crown could not be assailed. The wisdom of the exercise of the right is subject to very serious doubt. But here the question of constitutional validity passes over into the field of political expediency.

The government of the Canadas was a distinct factor in producing the crisis of 1837. The real constitutional grievance was not in the form of government but in the manner in which it was administered. The chief defects arose, not from the constitutional elements which had been given, but from those which had been withheld. The fundamental difficulty was the conflict between the legislative and executive authorities. The constitutional power of the governor in determining the composition of the legislative council aggravated the situation by virtually clothing the executive with double legislative powers. That it was not the written constitution which was at fault may be learned from a comparison between the government before the rebellion and after the

union. It is true that theories of reform were advanced advocating a change in the written constitution, but these proposals were based on a misconception of the causes of the breakdown and on a false view of the character of the constitution.

The causes of the rebellion were personal, not institutional. Yet the personal causes operated through institutions. The personal factor—the manner in which it was operated—made the constitution obnoxious. Similarly it was in the personal factor that a solution was sought. The constitution was to be operated in such a manner as to cause satisfaction instead of displeasure. Hence an extra-constitutional factor was introduced—the principle of responsible government. Responsible government in its essence is not an external form, but an attitude of mind. Hence also the remedy of the rebellion was not institutional but personal.

In consequence of the rebellion, the British government decided to suspend for a period—until November 1, 1840—the operation of the legislative council and assembly of Lower Canada.

Legislative authority was vested in a Special Council appointed by the crown. The statute constituting the Special Council [1] was silent on the question of the number of members composing the council, though the quorum was fixed at five. The first Special Council constituted by Sir John Colborne was composed of twenty-two members, whereas Lord Durham's council of June 1838 was limited to five. Lord Durham's use of the Special Council was considered as an attempt virtually to destroy its functions and to transfer them to the executive, and in consequence in the following year the membership of the council was fixed at not less than twenty, while eleven composed a quorum.

The legislative power of the Special Council was confined within very definite limits. The governor alone was entrusted with the power of initiating legislation. The council was not empowered to levy any new tax, nor to pass laws affecting the constitution of the assembly, or the rights of elections or the

[1] 1 Vict. cap. 9.

qualification of voters. Unless continued by competent authority, the laws of the Special Council were limited to November 1, 1842. The amending act of the following year[1] contained provision for extending the operation of the Ordinances of the Special Council beyond 1842, on condition that they remained before the imperial parliament for thirty days. In all cases the right of disallowance was reserved by the crown in council.

As indicated, the changes in the written constitution in consequence of the rebellion were slight. The government of the united province was still vested in a governor, executive council and a legislature composed of a legislative council and assembly.

The legislative council was to be composed of at least twenty members appointed by the crown. Absence from the meetings of council for two successive sessions without leave rendered a seat in the council vacant. The quorum of the council was fixed at ten, and, as formerly, the speaker was appointed by the governor. A casting vote was defined so as to limit the speaker to one vote.

The legislative assembly consisted of eighty-four members, elected equally from each province. Only persons possessing property of the value of five hundred pounds were eligible for election to the assembly. The quorum of the assembly was fixed at twenty members. English was declared to be the official language of the assembly. As formerly, the power of disallowance of legislation was retained by the crown. Legislation affecting the rights of the church, or the rights of the crown to its lands, was required to remain before the imperial parliament for thirty days before receiving the royal assent. The powers vested in the former executive councils were transferred to the new executive council of the united province.

The revenues within the power of disposal of the province were consolidated and made responsible for a permanent civil list of £75,000. In return the crown surrendered the territorial revenues which should form part of the consolidated revenue fund. Money bills were required to originate

[1] 2 and 3 Vict. cap. 53.

in the House of Assembly, on the recommendation of the governor.

Under a written constitution differing but slightly from the constitution of 1791, the province of United Canada began its career.

Duncan McArthur

HISTORY OF PUBLIC FINANCE
1763-1840

HISTORY OF PUBLIC FINANCE, 1763-1840

ON the acquisition of Canada in 1763 George III succeeded to the revenues and dues payable to the crown of France prior to the Conquest. The public revenue was regarded as belonging, not to the colony, but to the crown; in its collection and appropriation the prerogative of the crown was strictly asserted. The idea of colonial self-government had not yet become a factor in the administration of the colonies. The control of public finance was regarded as the stronghold of the prerogative, and, accordingly, it was one of the last positions to be invaded by the advocates of colonial autonomy. The history of public finance from 1763 to 1840 is but an account of the attempt of the Canadian provinces to secure control over the disposition of their own public revenue.

I

THE RECEIVER-GENERAL

DURING the period of military occupation the public finance of the province was without definite organization. General Murray, as commander of the king's troops, exercised the right of collecting the dues belonging to the British crown by right of conquest. Funds were collected by General Murray, but, according to the statement of Sir Thomas Mills in 1789, no evidence remained as to the manner in which they were expended. Civil government was established in October 1763, and in the following November General Murray was appointed governor of the province. His commission directed that 'all public monies raised, or which shall be raised, by any act hereafter to be made within our said province, be issued out by Warrants from you, by and with the advice and Consent

of our Council as aforesaid for the support of the Government and not otherwise.' Considering the appointment of a receiver-general necessary and 'no one being named by proper Authority,' Governor Murray, in September 1764, appointed Walter Murray of the city of Quebec as receiver-general of 'all Revenues, Rents, Quit Rents, Alienations, Fines, Amercements, due or hereafter to become due and payable to His Majesty, His Heirs and Successors . . . and of all Taxes and Duties imposed or to be imposed by any authority whatsoever due and payable to His Majesty upon the Sales of any Prizes, Reprisals, escheats, seizures and forfeitures or by any other ways or means whatsoever now due and belonging or hereafter to become due or belonging to His Majesty.' The receiver-general was required to give a sufficient security for the proper discharge of the duties of his office, and was to be guided by the directions of the governor or commander-in-chief of the province.

This method of procedure, however, was not in accord with the prevailing conception of government. The royal prerogative in administering the revenues of the crown was exercised by the lord high treasurer and the commissioners of the treasury. The local agent of the treasury was the receiver-general of the province, appointed by the crown but responsible to the commissioners of the treasury. General Murray recognized that his appointment was inadequate to meet the requirements of the treasury. In July 1765 Thomas Mills was appointed by the crown receiver-general of the province. He was to be governed by orders received from the crown, from the commissioners of the treasury or from the lord high treasurer, and was to render an account to the imperial exchequer. In lieu of all fees of office he was granted an annual salary of £200. The instructions to the receiver-general, issued in March 1766, specified the duties which he was to collect,[1] and directed that the proceeds should be appropriated, in the first place, to the payment of the necessary expenses of government and the charges of managing the revenue. The surplus was to be returned to Britain to be applied 'to the reimbursing of the Public here the Moneys

[1] See p. 494.

which have been necessarily advanced for that Province, by Reason that the aforesaid Duties and Taxes have not been levied within the two years last past.' He was directed to transmit annually to the commissioners of the treasury exact accounts of all receipts and expenditure. The authority under which the receiver-general should act was not clearly defined. His commission and instructions required him to make payments on the warrant of the commissioners of the treasury, whereas the commission to Murray directed the governor to issue warrants on the receiver-general. This confusion was in later years to cause serious trouble. Likewise, the receiver-general's instructions directed him to submit his accounts for audit to the imperial authorities, to whom he was held in bond and from whom alone he could secure a legal release. On the other hand, the council of the province claimed the right to conduct an audit of the receiver-general's accounts.

Thomas Mills entered on the duties of his office in July 1766, but in August of the following year found it necessary to personally represent the state of the public revenue before the commissioners of the treasury. Leave of absence was accordingly granted, and Hector Cramahé was appointed by Guy Carleton under the great seal of the province to act as receiver-general according to the powers and instructions granted to Mills. On Cramahé's promotion to the office of lieutenant-governor Thomas Dunn was, in July 1770, appointed acting receiver-general and filled the position until July 1777, when William Grant took over the office as deputy to Thomas Mills. In order to secure an audit of his accounts in Britain, Grant, in July 1784, requested leave of absence on condition that his duties should be exercised by his legal attorney, David Alexander Grant, and under deputation from the receiver-general. Leave of absence was granted by Governor Haldimand, but, despite Grant's protests, Henry Caldwell was appointed ' to be Acting Receiver General, in and for the behalf of Sir Thomas Mills.' The receiver-general returned in 1787 and continued to perform the duties of his office until August 1789, when, as the result of an investigation into his accounts, he was virtually suspended from office by Lord Dorchester.

II

REVENUE AND EXPENDITURE, 1763-74

BEFORE the Conquest the funds of government were derived chiefly from duties on imports and exports, feudal dues such as the *lods et ventes* and *cens et rentes*, from the lease of trading-posts in the king's domain, from a tax on houses, and from minor casual duties such as the *droit d'aubaine* and the *droit de déshérences*. By the Conquest the British crown came into possession of the hereditary rights belonging formerly to the king of France. Of these only the feudal dues at first seem to have been collected, and they constituted the chief source of the provincial revenue. Walter Murray accounted for £815 collected from the *lods et ventes* during the period from August 1764 to June 1766. There were likewise in force certain statutes of the imperial parliament [1] designed particularly for the regulation of trade, but which were not until a later date to become serious factors in producing a revenue. The hereditary and territorial revenue was quite inadequate to meet the expenditure of the province, and the attention of the British government was turned to the collection of customs dues. In November 1765 the commissioners of the treasury were directed by order-in-council to collect such of the dues as were formerly in force as they should judge expedient. In March 1766 orders were issued by the treasury to Thomas Mills to collect a revenue according to the following scale of duties :

	£	s.	d.
Wine, per hogshead,	0	10	0
Rum, per hogshead,	1	0	0
Brandy, per two gallons,	0	1	0
Wine (ordinary), per bottle,	0	0	0½
Sweet wine, per bottle,	0	0	1½
Eau de vie liqueur, per gallon,	0	0	5

Dry goods, imported and exported, 3 per cent *ad valorem*.

A proclamation was accordingly issued in July 1766 declaring this tariff of duties to be in effect.

[1] These statutes were 25 Chas. II, cap. 7; 6 Geo. II, cap. 13; 4 Geo. III, cap. 15; and 6 Geo. III, cap. 52.

The duty on dry goods acted as a very severe burden on the colonists, and frequent protests were made against its imposition. Nevertheless this tariff remained as the chief basis of revenue until 1774. The hereditary dues of the crown were not neglected, for the receiver-general was able to report a slight revenue from the *lods et ventes*. At no time, however, were all the taxes from this source collected.

The maintenance of the departments of the public service organized after the introduction of civil government in 1763 involved a very considerable expenditure. The public expense may be divided into three classes—salaries, fees of office and contingencies. During the early years of British administration the pernicious system was in vogue of rewarding public servants by granting fees of office in addition to the stipulated salary. A most elaborate scale of fees, covering every species of public service, was formulated and approved by council under General Murray. The system operated as a very distinct hardship on the mass of the people and was the occasion for many vigorous protests from Guy Carleton. Although Carleton did not succeed in completely removing the abuse, he was able to make the burden on the subjects very much lighter. Contingencies included the ordinary incidental expenses connected with the administration of the public offices.

The salaries of office, which were fixed by the British government, were estimated at about £3650 per annum. All the salaries contained in this estimate, however, were not paid during the first years of the administration. Fees of office and contingencies during Murray's administration as civil governor amounted, according to Guy Carleton's statement, to £4415, whereas the total expenditure by the receiver-general for the same period was £6230. The revenue fell far short of this amount, and for the balance the governor was obliged to draw on the commissioners of the treasury as occasion required. 'Money is very scarce in this Province,' wrote Murray, 'and Exchange at a very low rate, for these Reasons, and as small Bills can be disposed of more readily than Drafts for large Sums, Your Lordships will be pleased to excuse me if some of my Bills should be for only Fifty Pounds.'

III

REVENUE AND EXPENDITURE, 1774-91

DURING the years between 1770 and 1774 the attention of the British government was particularly directed to the conditions of the Province of Quebec. The state of the provincial revenue was included with the question of the law of the province and the status of the Roman Catholic Church as subjects for special investigation. While the Quebec Act embodied the policy of the government on the issues of the law and the church, the Quebec Revenue Act made provision for a more adequate provincial income. The Revenue Act abolished the tariff of 1765 and established the following scale of duties :

Brandy or other spirits of British manufacture, per gallon, 3d.
Rum or other spirits from the West Indies, per gallon, 6d.
Rum or other spirits from other American possessions, per gallon, 9d.
Brandy of foreign manufacture imported from Britain, per gallon, 1s.
Rum or spirits produce of American plantations not British, per gallon, 1s.
Molasses and syrups, imported in British ships, per gallon, 3d.
Molasses and syrups, imported in foreign vessels, per gallon, 6d.

In addition a fee of £1, 16s. was placed on the granting of every licence for keeping a house of public entertainment or a shop for the sale of liquors. At the same time the right of the king to collect the casual and territorial revenues of the French crown was restated. The provisions of the Quebec Revenue Act were found to operate to the prejudice of the Indian trade, and, accordingly, in 1775 the act was amended so as to permit the importation, duty free, of rum, brandy and spirits into the territory which had been added by the Quebec Act to the province as defined by proclamation in 1763.

The customs dues and the casual and territorial revenue were the chief sources of the provincial income for this period.

From 1783 to 1790 the sum of £31,585, 14s. sterling was collected from dues levied under the Quebec Revenue Act, and of this amount £27,411, 2s. 4d. was actually paid to the receiver-general. The difference represented an average annual expenditure in the cost of collecting of nearly £600, or for the total period of 13·2 per cent. For the entire period from 1775 to October 1791 the total revenue collected from customs dues was £94,762 sterling, while the amount actually paid by the receiver-general was £83,388 sterling.

The collection of the casual and territorial revenue of the crown was the occasion for much controversy between the years 1777 and 1791. Before the passing of the Quebec Act, to quote Sir Thomas Mills, 'the Casual Revenues of the crown were indeed received, from such as chose to pay, but no exertion compulsory to try a right, or enforce the Payment could safely be made.' In 1778 William Grant, the acting receiver-general, proposed an ordinance to the legislative council requiring all persons holding lands of the crown to make a settlement for all dues owed to the crown, and also requiring sheriffs, clerks of courts and notaries to report regularly all contracts of sale or judgments involving the payment of a tax to the crown. This measure, however, did not receive the approval of the council, nor did it again when renewed two years later. In 1785 an ordinance was passed requiring notaries and officers of the courts to make quarterly returns of all deeds of conveyance or judicial decrees affecting the public revenue, but the ordinance remained practically a dead letter. As the result of directions from the treasury a series of prosecutions was instituted by the receiver-general in 1785 for the recovery of the *lods et ventes*. A general protest was raised, for with the frequent transfer of lands the mutation fines in many cases exceeded the value of the lands; and, as a result, Lieutenant-Governor Hope directed that no further prosecutions should be made, and, though judgments had been received favourable to the crown, proceedings in execution were stayed. The general policy of the government, for political reasons, did not encourage the collection of a revenue from this source.

Nor was the attitude of the courts more favourable. In an

action taken by the deputy receiver-general in 1782 for the recovery of the *lods et ventes* on a certain property in the city of Quebec, sold under order of the court, judgment was given by the Court of Common Pleas that the claim of the crown was barred unless lodged prior to the sale or within twenty-four hours after it. A further difficulty arose in 1786, when the doctrine was advanced—and, indeed, given recognition in the council—that there was no court in the province competent to prosecute and recover claims for debts due to the crown. The result of these conditions was that, although the legal right of the crown to the feudal dues, and, in particular, the *lods et ventes*, was not denied, yet, as a result of the failure of the crown to collect them, the idea gradually became accepted that the feudal dues no longer formed part of the public revenue. The tendency of the administration to acquiesce in this view made it impossible in later years to collect the *lods et ventes*, and forced the government to place more dependence on the revenue derived from customs dues.

An imperial statute of this period—the Declaratory Act of 1778—was destined in later years to play an important part in the financial controversy. The act was indeed a belated endeavour to allay the resentment caused by the attempt of the mother country to levy taxes on the colonies for imperial purposes. The act set forth the promise that the imperial parliament would impose only such duties as were necessary for the regulation of commerce, and that the proceeds would be applied for the use of the colony in which they had been levied.

The public expenditure during this period followed the main lines already established. As a result of Carleton's policy fees of office were gradually diminished or compensated in salaries. The rapid increase in population, resulting in particular from the loyalist migrations, and the general expansion of the business of the province involved enlarging the public service, with the result that the appropriation in salaries and office contingencies was greatly increased. The settlement of the loyalists, the surveying of townships and the allotment of lands in particular, necessitated an increased public expenditure.

The excess of expenditure over revenue still continued to increase, and to meet the deficit resort was had to the military appropriations. The statement for the year ending April 1788 gives an example of the relation between revenue and expenditure, and the source of payment for the balance.

	£	s.	d.
Contingencies,	5,945	0	6¼
Salaries,	20,608	6	3½
Total,	£26,553	6	9¾

This expenditure was met by

	£	s.	d.
Warrants on Henry Caldwell, acting receiver-general,	3,326	17	8
Warrants on Sir Thomas Mills, receiver-general,	4,337	14	11¼
Warrants on Thomas Boone, deputy pay-master-general,	18,888	14	2½
	£26,553	6	9¾

From the standpoint of public finance the important features of the Constitutional Act were the division of the province, the creation of a popular legislative assembly, and the appropriation of one-seventh of the ungranted lands of the crown for the support of a Protestant clergy. The formation of two distinct governments involved the establishment of two offices for the administration of the public finance. The geographical situation of the upper province placed it in a peculiar relationship to Lower Canada. The lower province controlled the ports of entry through which the imports of Upper Canada were required to pass. Upper Canada, therefore, was compelled to depend on Lower Canada for the collection of a revenue from customs dues. The negotiations for the division of the proceeds of customs duties is a most important factor in the financial history of Lower and Upper Canada. The introduction of a representative assembly into the scheme of government was a necessary preliminary step in the contest for provincial control of provincial taxation. The assembly was the instrument through which the supremacy of the province was to be exercised. The formation

of the clergy reserves represented a new activity on the part of a colonial government—the support of the institutions of the Protestant religion. The clergy reserves were designed as the basis of a permanent asset of government to be employed for a specified purpose. The crown reserves—created not by the Constitutional Act but by an order from the British government—were of a similar character, though they served to contribute to a general fund to be used for the support of government in such manner as the crown should deem wise. The clergy and crown reserves were therefore certain to be involved in the struggle for popular control over the revenue of the province.

The loose system of administering the public finance which prevailed in the old province of Quebec had produced disastrous results. On the suspension of Sir Thomas Mills in 1789 a thorough investigation into the public accounts was conducted by the council, and, according to their estimate, the receiver-general was greatly in debt to the province, though that officer claimed that the balance was on the other side. Action was taken against both Mills and William Grant, his deputy, and £8756 were recovered from Grant. This experience, however, resulted in a reform in the system of auditing the accounts. In each province an inspector-general of public accounts was appointed who performed the duties of an auditor-general. The accounts were likewise submitted to the executive council and again to the legislative assembly. While in so far as the accounts were concerned there was little danger of fraud, the assembly had no means of determining whether the receiver-general's balances would correspond with his financial statements.

IV

LOWER CANADA, 1791-1818

THE Constitutional Act involved no immediate change in the basis of the provincial revenue. The tariff of 1774 still remained in force and, with the casual and territorial dues, licence fees and fines and forfeitures, supplied the pro-

vincial income. The extension of the machinery of government by the addition of a legislative assembly, and the constitution of a legislative council separate from the executive council, involved a considerable additional public expenditure. To provide a fund for the payment of the salaries of the officers of the council and assembly, and for the necessary contingent expenses, an act was passed in 1793 levying an additional fourpence per gallon on Madeira wine and twopence per gallon on all other wines. The net produce of this tax during the first year of its collection was £905, while in 1810 it had increased to £2814 currency.

In order to secure the co-operation of the provincial assembly in bearing the expense of the public service, Lord Dorchester suggested that a complete statement of revenue and expenditure should be submitted to the assembly each year. The plan was approved by the Colonial Office, and directions were accordingly given that the suggested returns should be laid before the house in order that it should be 'impressed with the generous and liberal conduct pursued by Great Britain for promoting the Strength, Wealth and general prosperity of the Province.' In 1795 returns were submitted of the revenue, classified according to source, since the passing of the Constitutional Act, and of the total expenditure, together with an estimate of the expenditure for the next ensuing year. The practice thus commenced has been continued by successive governments ever since. It was found that the revenue fell short of expenditure by £16,122, while the estimate for the year 1795 amounted to £19,993. This amount was made up of salaries, £15,525; incidental expenses, £2614, 13s.; officers of council and assembly, £985, 10s.; contingent expenses of the council and assembly, £869.

As a result of Lord Dorchester's request the assembly undertook to set aside £5000 per annum for the payment of the expenses of the administration of justice. To provide for this expenditure an act was passed in 1795 levying a new tax on wines, sugar, coffee, tobacco, salt and playing-cards. In the same year another revenue act was passed fixing a charge for granting licences to hawkers and shopkeepers. The total

revenue derived from these two acts in 1810 was £21,624 currency. Two other revenue acts were passed in 1801, the one granting a duty on licensing billiard-tables for rent, and the other a new impost on tobacco and snuff. Both of these acts were productive of a substantial revenue, which could be appropriated only by act of the provincial parliament.

The erection of public buildings and the improvement of the means of transportation involved an ever-increasing public expenditure. For the works requiring only a small expenditure the funds were generally advanced by the governor on the address of the assembly and with the understanding that legislation would be passed supplying the appropriation from the revenues of the province. These amounts were paid from the unappropriated balances remaining from the various provincial revenue laws. Public works of special importance, however, were financed on an independent basis. In 1805 provision was made for the erection of a gaol in each of the districts of Quebec and Montreal, to cost not more than £9000. The financing of this enterprise was the occasion for a most significant division in the House of Assembly. The commercial interests argued for a local tax based on property assessment, while the French-Canadian majority insisted on a tax on imports. The result was that a new tax was imposed on tea, wines and liquors, molasses and syrup, while at the same time a penalty was imposed on the selling of goods by auction without a licensed auctioneer. The unappropriated balance accruing from this act remained at the disposition of the assembly.

The collection of the *lods et ventes* again received attention in 1801. In that year an act was passed for the relief of persons holding lands of the crown *en roture* on which mutation fines were due. The governor was empowered to appoint a commission for the purpose of receiving pecuniary composition for the *lods et ventes*. While the claim of the crown to the hereditary dues of the king of France was asserted and provision made for a slight revenue, the chief purpose of the act was doubtless to serve as an inducement to change the tenure of lands to free and common socage. The proceeds from the *lods et ventes* in 1802 reached £6481 currency,

while in 1809 and 1810 they were £2052 and £1450 currency respectively.

The political feud between Sir James Craig and the House of Assembly was the occasion for the first definite attempt on the part of the assembly to secure control over the public finance. To the assembly Craig was the representative of an official bureaucracy, none too competent as an administrative body and thoroughly intolerant of the claims of French Canada. In order to secure control over the public administration and, in particular, over the civil service, the assembly, in an address to the king and Houses of Parliament, offered to raise the funds necessary for the support of the government of the province. The purpose of the assembly was very obvious, and the British government did not seem inclined to surrender its control over the provincial administration.

The provincial revenue at this time was in a most flourishing condition. The gaols act of 1805, which was to expire in 1811, during the first year of its operation produced £13,338, and by the end of 1810 brought in a total revenue of £86,535 currency. The original estimate for the gaols was £18,000, but this had been found inadequate, and at the same time a further estimate had been made for a gaol in the Gaspe district, bringing the total appropriation to £24,000. Hence a very large unappropriated balance remained, and it was chiefly from the operation of this act, which the assembly was prepared to renew, that they hoped to derive the revenue necessary to conduct the administration. The total revenue collected from all sources in 1809 amounted to £67,932 currency. The chief items in this were the casual and territorial dues, £5976; proceeds of the Quebec Revenue Act, 1774, £13,853; the provincial revenue act of 1795, £21,991; and the gaols act, £19,458. Of this total revenue only a part—the unappropriated surplus raised by provincial acts—was within the control of the assembly. The proceeds of the revenue acts of 1793, 1795 and 1805 for the year 1809, including the balance remaining from the previous year, were £57,954, but of this amount £22,716 had been appropriated by act of parliament. The unappropriated balance, therefore,

at the disposal of the assembly was £35,238 currency. The warrants issued for 1809, including salaries provided for by the assembly and the proportion due Upper Canada for 1808, amounted to £43,768. On this basis, therefore, the legislative council and assembly, working in concert, could easily have defrayed the expenses of civil government from the provincial revenue alone. The funds at the disposal of the assembly, independent of the council, fell short by over £8000 of the required amount. This political manœuvre of the assembly bore no immediate results, and it was not until after the government's appeal to the assembly for support in 1818 that the issue was to be reopened.

The financing of the War of 1812 forced the Canadian provinces to have resort to special expedients. Two alternatives were suggested—the formation of a private bank of sufficient strength to give confidence in the security of its notes, and the issue of a paper currency under the direct authority of government and with the government resources as its security. The second course was adopted, and the governor was authorized to issue army bills to the extent of £250,000 currency. Bills of the value of $25 and upwards bore interest at the rate of fourpence per £100 per day and were payable on demand in cash or in government bills of exchange at thirty days' sight, at the current rate of exchange. A commission was appointed to fix the rate of exchange every two weeks. Interest on these army bills was payable either in cash or in further army bills. Bills of $4 were issued not bearing interest, but payable in cash on demand. This paper currency was placed in circulation by being issued in payment of the regular debts of the government. The assembly guaranteed the payment of interest on the army bills to the extent of £15,000 per annum, and made the currency legal tender in the payment of provincial taxes and of deposits with the courts. A further security was given the issue by the assembly's guarantee to redeem, after five years, all outstanding army bills with the interest remaining due. The original loan proved inadequate, and in 1813 a further issue of £250,000 was authorized under the same conditions as the first. The total amount of the bills

of denominations of $20 and less was limited to £50,000. By provincial legislation in Upper Canada the circulation of the army bills was extended to the upper province, and the demand consequently became much greater. On February 28, 1814, bills to the value of £951,510 were in actual circulation, so that the limit set by the provincial law was vastly exceeded. An act of 1814, however, indemnified the director of the army bill office for exceeding his authority and permitted the circulation of bills to the extent of £1,500,000. This time a penalty was fixed for exceeding the amount authorized.

The legislative assembly in 1815 was prepared to make a further extension of the issue of army bills, but the council, now that the war was over, thought it wiser to follow a more conservative policy and rejected the assembly's bill. On January 31, 1815, there was in circulation £1,205,683, and during the next four weeks £294,000 was issued, bringing the total issue on February 27 up to £1,499,683. The amount outstanding at this time, however, was £1,321,817. Of this £500,000 was in bills of smaller denominations and not bearing interest. On the balance the interest was slightly above £48,000, which was met by the assembly's grant of £15,000 and appropriations from the Army Extraordinaries. After the close of the war the redemption of the army bills began, and in December 1815 Sir Gordon Drummond reported that the amount outstanding did not exceed £400,000. By 1816 the total issue had been redeemed by bills of exchange on London.

This experiment in public finance proved singularly successful. At a time when it was most important to sustain the aim of the government it enabled it to effect a very large loan on terms favourable both to the government and the public. When safety was a most important consideration it provided a currency which could be transmitted with ease and with a minimum of danger. Specie was almost impossible to secure, but, even had there been an abundant supply, the issue of army bills would still have been of a distinct advantage. During a crisis period it enabled the public treasury to discount its resources for the accommoda-

tion of its urgent and more immediate demands, and provided a medium of exchange which, even in the United States, was in greater demand than the regular provincial currency. From the standpoint of Canadian finance the army bill experiment was significant in demonstrating the value and uses of the credit system and, in particular, of short-term loans.

During the war period revenue acts were passed which still further increased the provincial income. In 1811 the duties imposed by the gaols act were continued to 1813, and the proceeds were appropriated for the erection of a provincial House of Parliament. The licence fee for shops and for houses of public entertainment was increased in 1813, and a further duty imposed on sugar, tobacco, snuff, salt, wine, brandy and rum.

V

UPPER CANADA, 1791-1822

THE first interest of Upper Canada in connection with its public finance was to secure an agreement with the lower province for a return of the customs dues on its own imports. Commissioners were appointed by each province and an agreement was reached in February 1795. Lower Canada gave the upper province £333 as payment for Upper Canada's share of the duties collected from the provincial revenue act of 1793. Upper Canada agreed not to impose duties on goods imported into Lower Canada, and in return was granted one-eighth of the net produce of dues collected in the St Lawrence ports. A second agreement was formed in January 1797 which introduced a new factor in ascertaining the basis of division. An inspector was appointed to examine all goods passing Coteau du Lac bound for Upper Canada, and on his report the allotment of the revenue was determined. For the first two years the inspector was appointed by the lieutenant-governor of Lower Canada, and for the second two by the lieutenant-governor of Upper Canada. Upper Canada agreed to levy the same duties as Lower Canada on imports from the United States. This

agreement was sanctioned by legislation in each province and remained the basis of division until May 1, 1816, when it was permitted to expire.

Upper Canada again found itself deprived of its main source of revenue, and demanded compensation from the lower province. In 1817 the assembly of Lower Canada granted the lump sum of £20,000 in lieu of the revenue which otherwise would have been paid to Upper Canada. A new basis of division was reached in May 1817, by which Upper Canada was granted one-fifth of the net proceeds of the customs dues, but in the heat of the controversy between the assembly and the Duke of Richmond the agreement expired on July 1, 1819. Upper Canada was now compelled to resort to the imperial parliament to secure a permanent basis for its revenue. The interests involved in the financial disputes were regarded as of sufficient importance to justify the union of the provinces. A union bill, indeed, was introduced, but secured little support in either of the Canadas. However, the financial provisions of the union scheme were retained in the Canada Trade Act of 1822. This act referred to a board of arbitrators the determination of the arrears due Upper Canada since 1819 on the basis of one-fifth of the net revenue, and also provided for the agreement of a basis of division once every four years after July 1, 1824.

The location of the province of Upper Canada and the character of its inhabitants determined the special lines which its revenue and expenditure should follow. Its position as an inland province made it depend to a greater extent than it otherwise would have done on purely internal taxation, such as licences. Its inhabitants, predominantly of British descent, were accustomed to institutions of local government and were most enthusiastically interested in the progress of the province and the development of its resources. Many of the works which in Lower Canada were paid by provincial aid were financed in Upper Canada by the local municipality. The provincial parliament was thus left greater freedom in providing for public works of a more general character.

The imposition of import dues in Upper Canada was confined to goods coming in from the United States. In

1801 an act was passed subjecting imports from the United States to the same duties as were imposed on similar articles received from Britain. In 1807 this was changed so as to make the tariff against goods from the United States uniform with that of Lower Canada.

Licences contributed a most important part to the revenue of the province. During the first session of parliament provision was made for the salaries of the officers of the council and assembly by a licence for the sale of wines. This was followed by a duty on stills of 1s. 3d. per gallon of their capacity. Licences were granted to pedlars and hawkers, to persons letting billiard-tables for hire, to vendors of liquors and to auctioneers. The licences made a steady and, in the aggregate, a substantial contribution to the provincial revenue. The proceeds of licences levied under authority of the Quebec Revenue Act for the years from 1797 to 1819 inclusive amounted to £15,476 sterling, while the largest annual income was £1249 in 1816. The amount levied under provincial statutes for the period from 1796 to 1819 was £72,314 currency, while 1816 again led with an income of £12,437. The most important source of revenue, however, was the customs dues levied by Lower Canada. Upper Canada's share of these for the years 1796 to 1819 amounted to a total of £168,617 currency. In 1815 the maximum income for a single year was reached with £39,250. From 1815 there had been a steady decline to £17,984 in 1819, which was the last year in which the old form of provincial agreement was in force.

The salaries of the officers of civil government, the administration of justice and the contingent expenses of the public departments were responsible for a large share of the provincial expenditure. In 1801 parliament made permanent provision for the salaries of the officers of the council and assembly by appropriating the sum of £1090 per annum. With increases in salaries, it was subsequently found necessary to augment this vote. While Lower Canada was wrangling over the question of the control of public officers Sir Peregrine Maitland succeeded in getting the assembly to vote a permanent annual appropriation of £4815 for the expenses

of civil government. In addition to this permanent expenditure special provision was made from time to time for the special needs of the province. The building of roads and bridges received particular attention from the assembly, and several acts were passed making special appropriations, including one of £20,500 in 1815, for the improvement of highways. In this work the township, the district and the province co-operated, each contributing the share which its particular position demanded. The establishment of an efficient school system became one of the first concerns of the government of Upper Canada, and as soon as settlement permitted provision was made for the building of schools and employment of teachers. In 1807 a special appropriation of £800 per annum was made for the establishment of a public school in each district in the province, while in 1816 an annual grant of £6000 was made for the purposes of education.

The War of 1812 produced a special set of financial problems. Not only did it tax the provincial treasury to the utmost of its resources, but it left a serious financial burden in a large number of pensioners, whose claims demanded satisfaction. In order to meet the expenditure which this involved, the assembly was compelled in 1821 to authorize the receiver-general to raise a loan of £25,000 by issuing debentures bearing interest at 6 per cent, payable half-yearly. With this began a series of loans which was to involve the province during the succeeding twenty years in a very serious public debt.

VI

LOWER CANADA, 1818-40

THE struggle for control over the revenue began in earnest in 1818. In accordance with directions from Lord Bathurst Governor Sherbrooke called on the assembly to provide for the ordinary annual expenditure. The assembly had not time to formulate a definite policy, and so adopted the temporary expedient of directing the governor to pay out of the unappropriated funds of the province the sum necessary

to meet the deficiency between the crown revenue and the expenditure. The occasion was seized by the assembly as a fitting opportunity to assert its control over the administration. The provincial revenue at this time can be divided into two classes—revenue belonging to the crown and revenue belonging to parliament. In the first class were included the casual and territorial revenue, the dues levied by British statutes regulating commerce, the proceeds of the Quebec Revenue Act, the returns from the sale of crown lands, and the funds specifically appropriated by provincial legislation for the purposes of government. The unappropriated revenue raised by provincial statutes constituted the second class.

The assembly, however, laid claim to all the revenues raised within the province. The granting of a popular assembly, they argued, of itself involved the transfer of the control over the public revenue to the parliament of the province. The practice of British parliamentary institutions, in their opinion, was introduced with the new constitution, and British custom demanded that the lower house should control public expenditure. As a means of enforcing this control they passed bills of supply specifying the particular purposes for which the revenue was appropriated. In this vote all distinction between crown and parliamentary revenue was lost; the two were consolidated and the total appropriated by the assembly. In defence of this position the assembly argued that they could not, with due regard to the interests of the province, vote an amount to pay the deficiency between the crown revenue and the total expenditure without examining the appropriation of the crown revenue to determine if the deficiency were actually as represented. They could not assume responsibility for a part of the expenditure without securing control over the total expenditure.

The policy of the governor was simply to insist on the prerogative of the crown. The legal right of the crown to appropriate the revenues belonging to it was clearly established, and any surrender must be by the grace of the crown and not under the force of compulsion by the assembly. The governor was well aware of the political purpose of the move, and realized that the supremacy of the crown, as interpreted

by colonial governors, depended on retaining control over the public purse.

The contest resolved itself into an attempt by the assembly to starve the government into submission. The final issue, therefore, depended on the staying power of the executive, which was determined by the extent of the resources at its command independent of the assembly. In the year 1818 there was an unappropriated balance from the previous year in the provincial treasury of £55,440. The total revenue for the first ten months of the year was £89,673. Of this £19,624 was derived from sources controlled exclusively by the crown, while £70,049 came from provincial revenue acts. The expense of collection and other incidental dues reduced this amount to £66,856. Of this sum £64,918 had already been appropriated by acts of the provincial parliament, leaving an unappropriated balance of less than £2000 currency. This, however, with the unappropriated balance from 1817, left £57,378 at the disposal of the assembly. Thus the greatest part of the total revenue was appropriated by act of parliament and beyond the control both of the assembly and governor. Although the assembly had the advantage of a large accumulated surplus, its annual surplus was too small to be of practical value. On the other hand, the crown possessed a growing income which could be appropriated independently of the assembly, but which was inadequate to meet the unpaid balance of the civil expenditure. The governor was interested more particularly in the civil list, which, under necessity, could be reduced to £40,000, while in a favourable year the independent income of the crown would approach £25,000. In case of necessity the military chest could be relied upon for the balance. In this test of endurance the assembly could reduce the power of the executive by refusing to renew temporary revenue acts, while the governor, on the other hand, was at all times able to draw on the military chest.

Under these circumstances the assembly's policy of starvation was doomed to failure. The executive was able, by economy in administration and resort to the resources of the British government, to carry on the public business

without consulting the assembly. The grants for civil government had been made permanent and could not be repudiated without the consent of the legislative council, which in this case it was impossible to secure. The temporary revenue acts were in general designed to meet expenditure required for improvements throughout the province, so that their expiration affected, not the executive, but the public.

The finances of Lower Canada were brought into a precarious condition by the bankruptcy of the receiver-general, John Caldwell, in 1823. The custom had been permitted, despite the warnings of the executive council, of allowing the receiver-general to loan money from the public treasury on letters of credit. In 1812 there were loans of this character outstanding to the extent of £32,792, while this amount increased in 1821 to £111,669. In 1821 the actual balance in the hands of the receiver-general was reported as £81,792. Action was taken against Caldwell for the recovery of £219,064 sterling, claimed as the proper balance due to the province, and a decision was secured for £96,117. On Caldwell's declaration of insolvency the office of receiver-general was temporarily placed in commission, while a short time later John Hale, the inspector-general of public accounts, was appointed receiver-general. Caldwell's property in the province, including the seigniory of Lauzon, was taken over by the government as part payment of the debt. The estate proved inadequate and a final settlement was never made.

One of the immediate effects of Caldwell's defalcations was a change in the system of audit. The audit conducted by a committee of the executive council, while never an adequate survey of the public accounts, had now become utterly inadequate. An office devoted exclusively to the oversight of the public accounts had become necessary, and accordingly two officers, an auditor-general and an inspector-general of public accounts, were appointed.

The contest between the assembly and the executive still continued. A statement of the income of the crown and an estimate of the expenses of government were regularly laid before the assembly, with the request that the needs of the

province be met by a bill of supply. The legislative council could be relied upon to throw out any bill which would infringe on the prerogatives of the crown. The assembly persisted in reviewing the items of expenditure and eliminating such as met their disapproval. It then voted, not the amount representing the deficiency, but the total amount of the appropriation. A departure was made in 1824, when, under Sir Francis Burton, the assembly, after striking out several items of the estimate, voted a sum—not specified—which, in addition to the permanent revenue, should bring the total appropriation to the amount of the revised estimate.

The year 1831 witnessed an important development in the financial contest. The particular concession desired by the executive from the assembly was a permanent provision for the salaries of the judges and leading officers of the civil government. The British parliament therefore proposed, in 1831, to surrender control over all the funds of the crown except the casual and territorial revenue in return for a permanent civil list of £19,500 sterling. The revenue handed over to the assembly included the proceeds of the Quebec Revenue Act and of a provincial act of 1801, and, after all deductions had been made, amounted to £38,125. The civil list required included £5300 sterling for the salary of the governor and the salary and office of the civil secretary; £11,450 for the salaries of the judges; and £2750 for pensions and miscellaneous expenditure. Of this amount £5000 sterling had already been appropriated by a provincial act of 1795, so that £14,500 was all that was demanded in return for the £38,000 currency surrendered. The crown on its side retained control of a revenue amounting to only £7800 currency. The majority in the assembly, however, refused to accept the offer, and the fight for supremacy continued.

This surrender of its revenue seriously crippled the executive, and the problem of securing adequate financial support became more serious. In December 1833 an agreement was made with the British America Land Company for the sale of certain crown lands and crown reserves in the Eastern Townships. The lands were estimated to consist of 847,661 acres and the price approximated £120,000. One-

tenth of the purchase-money was to be paid within a year after the granting of the charter of the company, while the balance was payable within ten years. The company was required to expend one-half of the price in improvements and public works on the property. From this source the government realized up to March 1837 the sum of £19,200, while £15,754 was expended on improvements.

In 1838 the constitution of 1791 was suspended and the governor was placed in control of the revenues of the province. The question of a permanent civil list, however, had not been settled, and remained one of the serious problems to find solution in the scheme of union. From the standpoint of public finance the important feature of the union to Lower Canada was protection from the burden of the debts of the upper province. Lower Canada, however, was not altogether free from a debenture debt. Between 1830 and 1840 debentures to the value of £78,975 currency had been issued to raise funds for the enlarging and improving of the harbour of Montreal, while £35,000 was raised for completing the Chambly Canal. The public debt of Lower Canada was therefore £113,975 currency.

VII

UPPER CANADA, 1822-40

THE division of customs dues collected in Lower-Canadian ports became a matter of the greatest importance to Upper Canada, since it affected the chief source of her revenue. Under the arbitration of 1824, for which provision was made in the Canada Trade Act, population was accepted as the basis of division, and Upper Canada was allowed one-fourth of the net revenue. This division was adopted in 1828, but in 1832 Upper Canada's share was increased to one-third. With the steady expansion of trade this fund gradually increased and became the mainstay of the government.

The incorporation of the Canada Land Company in 1826 gave the crown an opportunity to dispose of the crown reserves of the province. The original agreement of 1824

proposed selling to the company all the crown reserves and one-half of the clergy reserves not occupied or sold in the townships surveyed on March 1, 1824. A commission after a thorough investigation decided that the price to be paid should be 3s. 6d. per acre. The sale of the clergy reserves was bitterly opposed by the clergy of the Church of England, with the result that a second agreement was made two years later in which a tract of land known as the Huron Tract, consisting of one million one hundred acres, was substituted for the clergy reserves. The company in return was to pay the provincial government £295,000, to be paid in sixteen annual instalments. The greater portion of the first instalment was spent in payment of the expenses of the commission and incidentals in connection with the agreements. Between the years 1827 and 1833 the sum of £104,819 was received from the company, while of this £72,679 was spent in defraying the expenses of government. The expenditure declined from £16,213 in 1827 to £7554 in 1832. From 1827 to 1830 the salaries of the governor, the judges and chief executive officers were paid from this source. An appropriation of £1000 was made for King's College, while a small increase was allowed certain members of the clergy, and the balance was used in the payment of pensions. The sale of the crown reserves and the appropriation of their proceeds without reference to the assembly was not regarded with favour by the popular house, in which, as in Lower Canada, a party had arisen opposed to the executive.

So productive had the provincial revenue become that in 1829, with the £2500 currency appropriated by provincial legislation in 1816, it was capable of meeting the requirements of civil government. The additional revenue resulting from the agreement with the Canada Company enabled the executive to meet its necessary expenses without resort to the assembly. This state of affairs caused alarm in the assembly, and it protested against such independence as 'inconsistent with public liberty.' The manner in which the revenue was expended was severely criticized by the assembly and charges of extravagance were freely made. In a series of resolutions the constitutional right of the assembly to control the

appropriation of the public revenue was stated at length. But the situation was soon to be changed by the decision of the British government to give the assembly control over the funds derived from the Quebec Revenue Act.

In December 1831 directions were sent to Sir John Colborne to transfer to the control of the assembly the proceeds of the Quebec Revenue Act, estimated at £11,500, in return for a permanent civil list amounting to £10,800 sterling, and including, as in Lower Canada, the salaries of the lieutenant-governor and judges and a special appropriation for pensions. In submitting the proposal to the assembly Colborne asked for a permanent provision for salaries to the extent of £10,500, and also submitted an estimate for the expenses of civil government amounting to £7560. The assembly, though friendly to the executive, was not in a particularly generous mood, and granted a permanent supply for salaries to the extent of £6500, while at the same time it repealed the act of 1816, by which an aid of £2500 currency had been granted to the crown.

The building of adequate public works and the improvement of its water communication received the special attention of Upper Canada between the years 1821 and 1840. The Burlington Canal, the Welland Canal, the Desjardins Canal received extensive aid from the government. The improvement of the St Lawrence navigation and the building of harbours and bridges were likewise granted assistance. During these years forty-two series of debentures were issued for a total amount of £415,671, 11s. 2¼d. currency and £869,650 sterling. The following table contains a description of the various debenture issues.

DEBENTURES ISSUED BY UPPER CANADA, 1822-40

Act of the Legislature.	Letter of Schedule.	Service.	Sums raised. Currency. £	s.	d.	Sterling. £	Rate of Interest per annum.	Remarks.
2 Geo. IV, cap. 5	A	Militia	25,000	0	0	...	6 p.c.	£25,000 Redeemed
4 Geo. IV, cap. 24	B	Public Service of 1824	16,000	0	0	...	6 ,,	£16,000 Redeemed
3 Geo. IV, cap. 8 / 4 Geo. IV, cap. 16	C	Burlington Canal	8,000	0	0	...	6 ,,	£5,000 Redeemed
7 Geo. IV, cap. 60	D	Welland Canal	25,000	0	0	...	6 ,,	£25,000 Redeemed
8 Geo. IV, cap. 19	E	Burlington Canal	4,500	0	0	...	6 ,,	£3,000 Redeemed
8 Geo. IV, cap. 17	F	Welland Canal	50,000	0	0	...	6 ,,	£50,000 Redeemed
8 Geo. IV, cap. 18	G	Kettle Creek Harbour	3,000	0	0	...	6 ,,	
11 Geo. IV, cap. 11	H	Welland Canal	25,000	0	0	...	6 ,,	£25,000 Redeemed
11 Geo. IV, cap. 12	I	Burlington Canal	5,000	0	0	...	6 ,,	£3,000 Redeemed
1 Wm. IV, cap. 25	J	Oakville Harbour	2,500	0	0	...	6 ,,	Loan to Chisholm
1 Wm. IV, cap. 17	K	Roads and Bridges	20,000	0	0	...	6 ,,	
1 Wm. IV, cap. 18	L	Welland Canal	50,000	0	0	...	5 ,,	£50,000 Redeemed
1 Wm. IV, cap. 26	M	Kettle Creek Harbour	2,500	0	0	...	6 ,,	
2 Wm. IV, cap. 23	N	Port Hope Harbour and Wharf Company	2,000	0	0	...	5⅞ ,,	Loan to Company
2 Wm. IV, cap. 22	O	Cobourg Harbour Company	3,000	0	0	...	5⅞ ,,	Do.
3 Wm. IV, cap. 18	P	St Lawrence Navigation	3,000	0	0	...	5 ,,	
3 Wm. IV, cap. 55	Q	Welland Canal	1,250	0	0	...	5 ,,	
3 Wm. IV, cap. 33	R	Inland Waters, Newcastle District	2,000	0	0	...	6 ,,	Payable from tolls only
3 Wm. IV, cap. 34	S	River Trent Bridge	2,000	0	0	...	6 ,,	
3 Wm. IV, cap. 31	T	Brantford Bridge	1,500	0	0	...	6 ,,	
3 Wm. IV, cap. 38	U	Roads in vicinity of York	10,000	0	0	...	6 ,,	
2 Wm. IV, cap. 24	V	Desjardins Canal Company	5,000	0	0	...	6 ,,	Loan to Company
4 Wm. IV, cap. 39	W	Welland Canal	50,000	0	0	...	6 ,,	
5 Wm. IV, cap. 34	X	Desjardins Canal	7,000	0	0	...	6 ,,	Do.
3 Wm. IV, c. 26, 27	Y	War Losses	57,190	0	0	...	5 ,,	
4 Wm. IV, cap. 53	Z	To cancel part of Public Debt	...			200,000	5 ,,	Payable in England
5 Wm. IV, cap. 31	AA	Ditto, and for sundry Public Works	...			400,000	5 ,,	Do.
7 & 8 Wm. IV, c. 4	BB	For sundry Public Works	...			269,650	5 ,,	Do.
7 Wm. IV, cap. 76	CC	Chatham Bridge	1,100	0	0	...	6 ,,	Tolls and district liable
7 Wm. IV, cap. 83	DD	Chatham Bridge	1,500	0	0	...	6 ,,	
7 Wm. IV, cap. 68	EE	Erie and Ontario Railroad	5,000	0	0	...	6 ,,	
7 Wm. IV, cap. 81	FF	Kingston and Napanee Road	3,888	17	9¼	...	6 ,,	
7 Wm. IV, cap. 65	GG	Desjardins Canal	5,000	0	0	...	6 ,,	
6 Wm. IV, cap. 30	HH	Home District Roads	1,000	0	0	...	6 ,,	
7 Wm. IV, cap. 92	II	Welland Canal	3,200	0	0	...	6 ,,	
2 Vict. cap. 68	KK	Insurrection Losses	4,103	13	5	...	6 ,,	
7 Wm. IV, cap. 82	LL	Road from Queenston to Grimsby	2,000	0	0	...	6 ,,	
2 Vict. cap. 51	MM	Kingston & Napanee Roads	1,100	0	0	...	6 ,,	
7 Wm. IV, cap. 73	NN	Grand River Navigation Company	500	0	0	...	6 ,,	
3 Vict. cap. 51	OO	Chatham Bridge	359	0	0	...	6 ,,	
7 Wm. IV, cap. 78	PP	Hamilton and Brantford Road	3,430	0	0	...	6 ,,	
7 Wm. IV, cap. 66	QQ	Trent Navigation	3,050	0	0	...	6 ,,	
		Total Amount of Debentures issued	415,671	11	2¼	869,650		
		Total Amount of Debentures redeemed	202,000	0	0	...		
		Total Amount outstanding	213,671	11	2¼	869,650		

The union scheme was designed to overcome the difficulties in the administration of the public finance which had resulted from a lack of co-operation between the two provinces, and particularly between the various branches of government. The revenues of the two provinces were to be united into a consolidated revenue fund, which should bear the entire cost of collection and administration. The payment of the expenses of collection formed the first charge on the consolidated revenue fund. After that followed in order the interest on the debt of either province at the time of the union, the salary of the clergy authorized by law, the civil list, and, finally, any other charges levied by parliament. All payments from the public revenue were to be made by bills originating in the legislative assembly and for objects recommended by the governor. The dispute regarding the civil list was brought to a close by requiring the payment of a permanent annual supply of £45,000 for the payment of the salaries of the governor and judges, and of an annual aid of £30,000 during the life of the queen and for five years afterwards for the civil expenditure. In return for this supply the crown relinquished control over its hereditary revenues. With its financial issues thus clearly defined the Province of Canada was started on its course.

Duncan McArthur

GENERAL ECONOMIC HISTORY

1763-1841

GENERAL ECONOMIC HISTORY, 1763-1841

I

ECONOMIC RELICS OF FRENCH RULE

Early Commercial Conditions

FOR some time preceding the capitulation of Quebec, as we have seen,[1] the trade of Canada had been almost entirely in the hands of officials who manipulated it for their own benefit. There were no open markets for the produce of the country. The agents of the government demanded it all, and paid for it in depreciated—ultimately almost worthless—paper currency. These officials returned to France, leaving Canada practically destitute of a mercantile class.

The victorious English forces were followed by traders from the colonies of New York and Massachusetts. These English colonial merchants were lured to Canada by the hope of securing contracts for the supply of the troops, and an early share in the fur trade which had long excited their envy. They were prepared to sell such articles of English manufacture as their new fellow-subjects might require, and to buy from them their surplus grain and other farm products, partly for export to Great Britain and the West Indies, and partly for military supplies. Thus the wholesale trade of Canada fell into the hands of English traders, under whose control it remained during succeeding years. The retail and domestic trade, however, remained largely with the French. This diversity of interest, coinciding with racial differences and prejudices, undoubtedly had much to do with the discord which subsequently arose between the two races in Canada.

[1] See section 1, New France: 'The Colony in its Economic Relations.'

The vigour and enterprise of the English traders—whose motives, of course, were centred in personal gain—contributed greatly to the recovery of Canada from a condition of economic paralysis. The traders, however, received little direct encouragement from the government. The military officers who held the country and administered it under martial law had few ideas in common with these merchants. They looked with more favour upon the few members of the Canadian noblesse who had remained in the colony, and apparently preferred their society to that of the democratic and energetic tradesmen of their own nationality.

The Treaty of Paris—the sequel to that world-wide struggle, the Seven Years' War—finally determined that Canada should remain a British possession. The proclamation of October 7, 1763, following the treaty, indicated an economic policy towards the new colony similar to that adopted in the other British colonies of America. Consequently many of the English accepted the invitation issued in the proclamation to 'all our loving subjects, as well of our Kingdom as of our Colonies in America,' to 'avail themselves with all convenient speed, of the great benefits and advantages which must accrue to their commerce, manufactures, and navigation,' by the opening of the new territories for settlement. It was promised also, as contributing 'to the speedy settling of our said new Governments,' that the king's subjects should have their liberties and properties rendered secure by the calling of general assemblies of the representatives of the people, as soon as circumstances would permit, in the four new provinces,[1] of which Quebec or Canada was one. These assemblies, it was said, should be convened 'in such manner and form as is used and directed in those Colonies and Provinces in America which are under our immediate Government.' It would be their duty 'to make, constitute, and ordain laws, statutes, and ordinances for the public peace, welfare, and good government of our said Colonies, and of the people and inhabitants thereof, as near as may be agreeable to the laws of England.' The lands and possessions of the crown in these colonies were to be disposed of to the settlers

[1] Quebec, East Florida, West Florida and Grenada.

upon terms similar to those in the other colonies. The Indians were not to be disturbed in their rights to their lands not ceded by the crown, and the settlers were prohibited from purchasing lands directly from the Indians. At the same time the Indian trade was to be free to all British subjects on condition of their taking out licences from the governor and giving security to respect the laws for its regulation.

When Canada was brought within the British Empire the problem of illicit trade with the British colonies to the south naturally disappeared. In its place, however, there arose the problem of illicit trade between the French islands of St Pierre and Miquelon and the French-Canadian settlements along the St Lawrence. Lord Chatham had desired the exclusion of the French entirely from the neighbourhood of Canada or Newfoundland. He had contended that if France were left a single foothold in the Gulf it would be used continuously as a centre from which to make trouble for the British government in times of international crises, and, in times of peace, to smuggle liquors and other French wares into Canada and the Maritime Provinces, to the detriment of British trade and of colonial revenue. Chatham's prediction was abundantly fulfilled. St Pierre and Miquelon and the French shore of Newfoundland soon began to give trouble to the British authorities, and continued to do so for upwards of a century. In September 1763, a few months after the Treaty of Paris was signed, Governor Murray urged the establishing of several revenue cutters in the lower St Lawrence to prevent smuggling from the Islands of St Pierre and Miquelon, already stocked with French liquors and goods, which, it was declared, could be run into the Canadian creeks and bays with very little trouble. At considerable expense one or two cruisers were maintained in the Gulf ; but the territory to be guarded was too large, and it was soon found that French goods were being landed at various Canadian points and brought up the country in winter by means of sleighs.

The duties levied on colonial trade by the British government, and the Stamp Act in particular, were objected to in Canada as well as in the other American colonies ; but the

Canadian merchants were a small body, and their new fellow-subjects of French origin neither understood the questions involved nor felt any direct inconvenience from the taxes levied. Another matter of dissatisfaction was the granting to Dunn and Co., in 1765, of a monopoly of the Indian trade at the King's Posts. The merchants objected to this on the ground that, under the proclamation of 1763, the Indian trade was to be open on the same terms to all. These King's Posts, chief of which was Tadoussac, at the mouth of the Saguenay, were the trading-posts that had been held by the French monarchs as monopolies of the crown. The revenue from these, either as the result of direct trade by the king's agents, or more commonly from farming them to the highest bidders, had always gone into the colonial treasury. The British government, in this respect, merely followed the example of the French, and endeavoured to collect most of the taxes and feudal dues which had been levied under the old régime. The English merchants maintained that under British law there was no constitutional authority for much of this taxation. Before the question was finally settled the wider issues into which it had merged had brought about the American Revolution.

From data collected by Governor Murray for his comprehensive report on Canada in 1762 it appeared that nearly eight million acres of land had been granted during the French régime. Of this more than two million acres had been granted in mortmain to the church for religious and educational purposes. In most of the grants made to individuals certain rights, mainly in respect to roadways, shores, oak timber for vessels, and various minerals, had been reserved to the king.

Murray reported that the soil was capable of producing much grain, but that the people did not take full advantage of its fertility owing to their very primitive agricultural system. This was partly due to the precarious position of the habitant. Liable to be called away at short notice for military or transport duty, the farmers, for some time previously, had never been certain that they would be permitted to reap where they had sown. Hunting and fishing furnished a considerable portion of the animal food supply, while quite a

variety of articles of domestic manufacture were produced by the industry of the women. For the supply of their daily wants the majority of the inhabitants depended but slightly upon imported goods from the stores of the merchants. In consequence they were not much affected by foreign trade, or by the burdens or imposts laid upon it.

It was Murray's opinion that if the attention of the people could be turned to the growing of flax and hemp these might become articles of considerable export to Britain, while the preparation of the flax would give the women and children a new occupation during the long winter, and perhaps divert them from the production of the coarse homespun which they were using as a substitute for imported cloth. This was merely a normal application of the colonial policy of the period, which sought to make all industry in the colonies subservient to British industry, and to discourage the production of any goods which might compete with the manufactures of the mother country. In Canada, however, the limited market for British imports was not due to the competition of local manufactures, but rather to the undeveloped wants of the people in the rural parishes.

The Indian Trade

The policy of equal rights in the Indian trade did not result very happily. Continuous friction arose out of the rivalries of the traders from the various colonies. The commanders at the western posts were accused of favouritism prompted by personal interests. Canada claimed a special jurisdiction over the Great West on account of the early discoveries of the French explorers, but the validity of this claim was disputed by representatives of the other colonies.

Sir William Johnson, who had a special knowledge of Indian conditions, proposed, in 1767, certain regulations for the control of the Indian trade. The essential features of these were that every trader to the Indian territory should obtain a special pass or licence from the government of the colony to which he belonged, and give bonds that he would abide by the regulations prescribed by the central government. The traders should exhibit their passes on arriving at

any trading-post, and should not break bulk or trade with the Indians at any intermediate points. They should stop at every post where there was a commissioner, make the necessary declaration, and submit to an inspection. They should also possess standard weights and measures. A tariff of values was to be made out annually and kept at each post, the buying and selling of goods to be regulated thereby.

The merchants objected to the rigidity of these regulations, especially that preventing them from trading anywhere between posts. The subject continued for years to be a matter for vigorous discussion. In 1768 the Quebec merchants sent a memorandum on the subject to England, and next year the Canadian merchants and their London representatives, together with a committee of the Quebec Council, were appointed to report on the subject. Their report was to the effect that the conditions under which trade was carried on at the western posts were very unsatisfactory. There was no definite civil jurisdiction at these posts, nor were they annexed for civil purposes to any particular province. Moreover, the position of Superintendent of Indian Affairs had been abolished, as it was not advisable to incur the risk of a conflict of authority within the Indian territory. It was recommended that these territories should be brought under the government of some one province. The most convenient provincial connection, alike as to transportation, knowledge of the country, the number of persons engaged in the Indian trade, and the amount of British goods employed, was that of Quebec.[1] In the meantime the licences were continued and the special regulations provided for the Indian territories were applicable to all ; but the difficulty remained, there being no adequate authority to enforce the law.

For these and other reasons the Indian trade, and the Eastern trade dependent upon it, did not flourish during the first years of British rule. Pontiac's War (1763-66) affected it adversely ; another difficulty lay in the speculative character of the trade ; losses were numerous ; the credit of those

[1] This recommendation probably influenced the terms of the Quebec Act of 1774, by which the boundaries of Quebec were enlarged and its jurisdiction extended over the great Indian territories.

who undertook the actual trading was questionable. The usual basis of profits and credits, therefore, could not be applied to this business, nor could the legal machinery of the English bankruptcy law. Some contended that the trade of the colony, including that in furs, should be made subject to this law, and thus placed on a more businesslike and reliable footing. Others, with equal knowledge and experience of Canadian conditions, considered that the law, if applied, would force into bankruptcy and idleness many who, given further time, could redeem their obligations. It was also urged that it would enable local traders to take a very unfair advantage of their creditors in London. The discussion was very active for a time, but interest in it was weakened by symptoms of the approaching American Revolution.

Manufactures, 1768

In 1768 the governor, Guy Carleton, made his first report on the manufactures of Canada. From it we learn that a considerable quantity of flax was being produced and made up into coarse linen, but that little of this was brought to the public markets. Wool was not very plentiful. The long Canadian winters rendered the keeping of sheep unprofitable. One or two were kept by a number of the farmers. The wool was worked up by the women into knitted garments for winter wear. By weaving a woollen thread on a linen warp they produced a coarse cloth known as 'linsey woolsey,' chiefly used for making men's garments. It was estimated that about one-third of the inhabitants clothed themselves by their own industry. Practically all the caps and blankets used were imported from Britain. A species of coarse pottery was made for dairying and kitchen utensils, but no pottery for table use. There were a few tanneries in the country, but as they used hemlock bark in tanning they produced only a coarse grade of leather. Most of the imported leather came from the adjoining English colonies, there being little demand for the finer and higher-priced leather made in England.

On receipt of Carleton's report Lord Hillsborough, the colonial secretary, expressed considerable alarm at the extent

to which the Canadians were producing cloth. The privilege of clothing the people of the empire was regarded as an essential perquisite of the textile industries of the mother country Hillsborough trusted that the energies of the people of Quebec might be attracted to some more innocent and more imperially useful employment.

In 1767 a native of Britain set up in Quebec a pot- and pearl-ash business, and three years later fifty tons of very good potash were shipped to England. For the next half-century in Canada potash was an important article of trade. It was obtained by leaching wood ashes with water, which carried through in solution the potassium carbonate with small quantities of other alkali salts. The lye or solution was then evaporated in large iron kettles, either built into brick or stone fireplaces or simply suspended over open fires. The evaporated potash was then calcined, put up in wooden barrels, and exported to Europe for employment in the bleaching and other industries. Canadian hardwoods, particularly maple, beech and birch, were especially rich in potash. These trees were usually found on good soil, and the clearing of the forests for farming furnished potash as a by-product, making a welcome addition to the early income of the farmer. The discovery of processes for extracting potash and soda-ash from mineral deposits lessened the demand for the Canadian product coincidently with the disappearance of the wood profitably available for its manufacture.

In 1769 a rum distillery was established in Canada, and was welcomed by the authorities, as the necessary molasses would have to be obtained from the West Indies. This, it was expected, would stimulate direct trade with those colonies. The governor dreaded the consequences of reciprocal trade with the adjoining colonies, which were then rapidly drifting into trouble with their governors and the mother country.

Trade in oak staves was begun in 1771. The staves at first came from the English settlements along Lake Champlain, but were brought to market by French Canadians via the Richelieu and St Lawrence route. About 150,000

oak staves were exported to England in 1772. A standing bounty was offered on these, but the red-tape formalities necessary to secure it prevented even the most enthusiastic producers from attempting to qualify.

When the Canadian farmers had recovered from the paralysing effects of the closing years of French rule, a great revival in farming took place, and for a time there was a ready market at cash prices for all they could produce. The local market was soon overtaken, and in 1771 188,000 bushels of grain were shipped from the St Lawrence ports.

One of the most interesting industries connected with the old régime in Canada was that of the iron forges near Three Rivers. The ore used was a very pure oxide of iron, deposited from the waters of the St Maurice. When smelted with charcoal it produced a fine quality of iron, particularly suitable for the manufacture of wrought-iron implements, or for conversion into steel for axes and tools. The correspondence of Haldimand, who succeeded Burton as governor of Three Rivers in 1762, shows that the forges were continued in operation by the English. Haldimand thought that they should be carried on by the government, and they were accordingly continued on a semi-military and feudal basis by the enforcement of corvée or statute labour, such as was enforced by the French government. Thus we find that in 1764 the men working at the forges received the same regular rations as were furnished to the troops. The wood for the manufacture of the charcoal required in the process of smelting was also obtained on the basis of feudal requisitions. In 1765 Haldimand was removed to New York, and, his successor having but little interest in the matter, the forges were closed. In June 1767 Governor Carleton granted to C. Pelissier a lease of the mines and forges with the accompanying buildings and equipment. He set them in operation once more, and they continued to produce bar iron, stoves, pots and, later, potash kettles. In 1770 some 400,000 pounds of bar iron were produced, in addition to stoves and pots, and in the following year 200 tons of pig iron were exported to Britain. The subsequent fortunes of this iron industry will be referred to later.

The Revolutionary War

In 1774 the Quebec Act brought the commerce of Canada under the ancient French law, long obsolete in France itself. Chief Justice Hey of Quebec, in a report to the English Lord Chancellor in 1775, refers to the intense opposition of the clergy and the noblesse to English laws and institutions. Under the authority of the Quebec Act they refused to permit the English law to be used in commercial matters, notwithstanding the unfortunate effects upon the business of the country of the revival of the antiquated French system. Business, the chief justice says, 'depends upon the English merchants with whom almost the whole trade of the country lyes, and which without them was, and without them will continue, except for a very few articles and these of no extent, a country of no trade at all.' In consequence, for many years to come, while the rural prosperity of the country based upon the trade in raw materials and elementary agriculture was considerable, the higher trade and industry of the lower St Lawrence remained stagnant, or remarkably slow as compared with that of the western settlements,[1] which, owing to their remoteness from the sea and the almost insuperable transportation difficulties of the rapids west of Montreal, were much less favourably situated for trade.

To escape the commercial disabilities of the restored French law a plan was devised and advocated, first in the town of Quebec and afterwards in Montreal, for the establishment of Chambers of Commerce for these towns and adjoining districts. In 1777 Governor Carleton submitted the Quebec proposal to the British government. The Chamber of Commerce was to be composed of all the merchants and traders of both races in Quebec. It was to be managed by twenty-five directors, including a president and other officers, these

[1] The loyalists who settled west of Montreal after the Revolutionary War refused to be retarded by the ancient French laws as to trade and land tenure, and their agitation on this basis ultimately led to the division of the Province of Quebec into Upper and Lower Canada. Montreal, though situated in Lower Canada, naturally became the most convenient port of entry and export for the new settlements, and soon developed a commercial importance much beyond that of the older city of Quebec.

to be elected annually, five to constitute a quorum. The board of directors, or a quorum of them, was to constitute a board of arbitrators to decide such commercial matters in dispute as might be brought before them. The decision of the board was to be final in all actions not exceeding £50. Beyond that amount there might be an appeal to the full board, with a quorum of at least thirteen members, the decision of this larger board to be final for all amounts. The directors were to have power to frame rules and regulations for the general benefit of trade, subject to the approval of the whole body of members. These rules should be then laid before the government of the province, and, if approved, should pass into law. The Chamber of Commerce was to be made a body corporate, capable of holding property and of offering premiums for the encouragement of trade and agriculture. The corporation might also adopt and publish by-laws, not inconsistent with the laws of the province, for the general benefit of trade.

This proposal, which would have gone far to redeem the provincial situation, came before the British government at an unfortunate period. The conflict with the colonies in America was at its height, and Lord George Germain, between whom and Carleton bitter enmity existed, was at the Colonial Office. In the face of such an untoward combination the proposals of the merchants came to nought. Carleton asked the king's permission to resign his governorship, in order that the private feuds of the king's servants should not add to the misfortunes of his reign. His request was granted, and Haldimand was appointed to succeed him in the latter part of 1777.

Haldimand was a foreign soldier of fortune and without experience or training in civil administration. Even had he been qualified for his office he had little opportunity to show administrative ability while the struggle with the American colonies absorbed the attention of the British officers in America. The difficulties affecting Canadian trade increased with every effort to expand it. The proposal for the Chamber of Commerce was revived in 1787, when the legal obstructions to the economic development of the

colony had become so great as to be almost intolerable. But the remedy ultimately determined upon was to divide the country into two provinces, in the vain hope that the French section would recognize the superiority of the English laws and institutions and voluntarily adopt them.

The conflict in America having extended to the West, considerable attention was paid to guarding the lake route. The chief posts on the lakes at this time were at Niagara and Detroit, Fort Frontenac at Cataraqui having been abandoned. A post at the eastern end of Lake Ontario being once more required, the military authorities selected Deer Island in preference to Cataraqui. A fort, named after Carleton, was established on the island. There, and at Niagara and Detroit, vessels were constructed with all speed, and such private ships as were to be had, even down to ordinary bateaux, were pressed into the government service. The attention of the government was thus directed to the territory along the St Lawrence and the lakes, and this led to the selection of certain districts on this route for the settlement of the loyalists when the Revolutionary War was over. These settlements were to exercise a powerful influence upon the economic and political future of Canada.

The Indian trade to the West had been carried on almost exclusively by the Ottawa, Nipissing and Georgian Bay route ; but now the heavier freight service, especially the transport of food and general supplies, was diverted to the lake route. It passed up the St Lawrence in bateaux, across Lake Ontario in vessels, thence by wagons over the Niagara portage from Queenston to Chippawa, and from there to Detroit and Michilimackinac by vessel.

England had inherited from France the white man's burden of keeping the western Indians in good humour by means of liberal supplies of provisions and presents. The supplies for the Indians and for those who administered their distribution were furnished, partly by the agents of the government itself, and partly by the traders at the posts, and the latter expected large profits on their ventures. So great was the demand for provisions in connection with all the Canadian services during the Revolutionary War that

food as well as other supplies were sent from Britain to Quebec.[1] Indeed, prices rose so high in Canada that the government seriously considered the proposal to regulate them by law and administrative process, but the attorney-general declared such action to be beyond the powers of the provincial government. The government did undertake, however, to prohibit the export of food products during the year 1779-80. At Quebec the price of wheat was $2.00 per bushel, and of flour $8.00 per cwt. One may imagine the prices asked at the western posts.

II

AN EPOCH OF TRADE REGULATION

Commercial Restriction

THE treaty of 1783, which brought the Revolutionary War to a close and established the independence of the United States, left unsettled the question of trade relations between Great Britain and the United States and between their territories in America. The leading statesmen of the time, led by Shelburne and the younger Pitt, favoured the continuance of virtually the same free reciprocal trade which had existed before the war. The majority of parliament, however, determined that the Trade and Navigation Acts which applied to foreigners should now apply to the late colonies. This involved a disregard of the highly profitable trade which had existed between the colonies and the mother country before the war. From the treaty of 1783 to Jay's Treaty in 1794 trade between British America and the United States was subject to the general trade laws of Britain and the States, modified by executive orders.

The first British law dealing with the American trade was passed in 1783 immediately after the signing of the treaty. It gave to the crown 'certain powers for the better carrying

[1] From the record of exports at the port of Quebec it is found that the outward trade of Canada was very light during the Revolution; practically no food products were exported. The chief exports were various forms of timber and lumber, and large quantities of furs and skins.

on of trade and commerce between the subjects of His Majesty's Dominions and the inhabitants of the said United States.' This act was extended in 1784 and authorized the issue of orders-in-council regulating, by duties, drawbacks or otherwise, the trade between the British Dominions and the United States. In accordance with this act a proclamation was issued (April 16, 1784) prohibiting trade by sea between the American provinces and the United States. By special dispensation of the council of Quebec a British vessel was permitted to land at Quebec a cargo of flour from Philadelphia.

The act of 1784 was continued by the act of 1785, in accordance with which an order-in-council was passed (April 8, 1785) prohibiting the import by sea into the Province of Quebec of any produce of the United States. The same year the administrator was instructed to propose to the legislative council of Quebec an ordinance to prevent the export of peltry from the province to the adjoining States.

At the same time a nearer and more pressing claim was made for mutually profitable trade relations with the Canadian colony. The State of Vermont, geographically isolated from the other states, was forced to find its natural connection with the outside world through Lake Champlain and the Richelieu River, a tributary of the St Lawrence. In 1785 Thomas Chittenden, governor of the state, sent Ira Allen and two other envoys to treat with the government of Quebec for a trading outlet through that province. They brought with them a copy of an act of the State legislature, of October 1784, authorizing the opening of a free trade into and through the Province of Quebec. Lieutenant-Governor Hamilton of Quebec appointed a committee of council to report on this proposal. The committee, however, found itself forced to report that, owing to the order-in-council of June 18, 1784, Quebec had no authority to enter into trade relations with Vermont. It recommended, therefore, that the proposal be sent on to the British government. The British government at that time took a view very adverse to the inland trade between Canada and the United States, and issued an additional order-in-council of March 24, 1786, strictly prohibiting the 'importation of all goods and

commodities of the growth or manufacture of the United States into any of the ports of the Province of Quebec.' A year later merchants of Quebec and Montreal, in a memorial to the provincial council, renewed their request for free trade with the people of Vermont. Referring to the order-in-council of March 1786, they pointed out that the people of Vermont claimed to be independent of the United States, and that, therefore, their trade did not necessarily fall under that prohibition. The Canadian merchants urged the benefit to the province which would result from a liberal treatment of trade with Vermont, which had no other markets in which to buy and sell goods than those connected with the St Lawrence route.

The advantages to Canada of allowing the new American settlers to the south of the Great Lakes to find an outlet and an inlet by way of the St Lawrence route were early recognized in Canada. In 1785 Lieutenant-Governor Hamilton, writing to Lord Sydney, referred to the number of settlers from the Eastern States who were passing over into the Ohio valley, and who in a few years would have considerable exports in the way of lumber, grain, cotton and tobacco, and would require corresponding imports. This trade, he considered, should pass through the hands of the Canadian merchants, to whom it would be a source of considerable profit. He proposed, therefore, not only to permit this trade, but to develop it by improving the means of communication between Montreal and Lake Huron. Thus early was this cardinal policy of the more far-sighted Canadian merchants and statesmen laid down, and it is an interesting feature of Canadian economic history to trace the vicissitudes of this policy and the changing attitudes of the home government towards it from that day to the present time. At this early date, however, the home government did not at all favour the idea, on the ground that it was in conflict with their ancient colonial policy and with the Navigation Acts.

The West Indian Trade

The trade between the American colonies (now the United States) and the West Indies had grown up gradually

from humble beginnings through a period of nearly one hundred years. This had involved a long series of trials, experiments and mutual adjustments until the exchanges had proved to be of the greatest value to both the West Indies and the American colonies, and through them to Great Britain. It was now the policy of the British government, influenced by Lord Sheffield and other restrictionists, to shut out the new United States from free trade with the West Indies on the one hand, and with the northern colonies of Canada, Nova Scotia and New Brunswick on the other. Thereby, it was believed, the supplies of lumber, live cattle, flour, dried fish and other provisions, which formerly went to the West Indies from New England, New York and Pennsylvania, would thenceforth be supplied by the British provinces, which in turn would take the place of the American states as markets for West Indian produce. Both the West Indies and the provinces being subject to Britain, it was supposed that their mutual trade, under British regulation, could be rendered entirely subservient to British interests. Apparently it was forgotten that for years before the Revolution Britain had been unable to control the trade of her American colonies. It is conceivable, of course, that a trade relationship with the West Indies might have been developed in course of time in the northern British provinces. But, even assuming the influx of a large population into those provinces, this would have involved many seasons of experimental development.

The attitude of the British government led to a series of very exasperating disputes with the West Indies and to a tariff war with the United States, while it failed to confer any permanent benefit on Canada or the Maritime Provinces. It resulted in the heavy decline and partial ruin of the West Indian trade, once the most flourishing and valuable of all branches of British colonial commerce. The troubles it engendered lasted from 1783 to 1848—a period of alternating hope and despair in Canada, ending in a spirit of rebellion and an Annexation Manifesto in 1849.

The primary object of the British orders-in-council following the treaty of 1783 was to monopolize for Britain

the whole of the carrying trade to and from the United States, to the complete exclusion of American shipping, and, consequently, to divert as much trade as possible to the remaining British colonies in North America. The Americans had hitherto enjoyed a very considerable share of the carrying trade between their states and the West Indies, and they resented the total exclusion of their ships from the carrying trade, both inward and outward. After much discussion, and many attempts on the part of Washington, Jay and other leading Americans to hold in check their impatient fellow-citizens and to obtain concessions for American vessels in their trade with the West Indies in particular, the American government was forced to retaliate. The immediate effect of this was to shut off from the West Indies their usual supplies of provisions and raw materials. The merchants and planters of the British West Indies soon poured in vigorous remonstrances to the British government. They prayed for the repeal of the British orders-in-council, pointing out that they could not be made effective, because the Americans would eventually introduce their goods through the foreign West Indies, once the new connections were established. Through these channels they would obtain a monopoly of the carrying trade on the goods in question, while the people of the West Indies would have to pay a higher price for the necessaries of life by reason of the circuitous routes through which they came. Still the prevailing sentiment in the British parliament of the day was against any modification of the Navigation Acts, upon which it was believed by many that the commercial position of the nation rested. The remonstrances from the West Indian planters were ignored. The smuggler did much to secure for the people of the West Indies what the British regulations denied them. In consequence the decay of the prosperity of the West Indies was rendered more gradual. British trade did not suffer in any great degree at the time, inasmuch as English manufactured goods, being better in quality and cheaper in price than those of any other country, commanded both the foreign and colonial markets, even in spite of mistaken fiscal efforts to enlarge those markets. British

shipping alone suffered from the enforcement of the orders-in-council.

Commercial Friction in Quebec

In the meantime a bitter conflict had arisen in the provincial council of Quebec over the attempts made by business men to redeem trade and commerce from the consequences of the Quebec Act. The restoration of the old French laws had thrown the legal system of the country and the practice of the courts into confusion. This discouraged all new enterprises and prevented Canadian traders from making commercial connections with the West Indies and the British provinces on the Atlantic. In 1787, after several years of almost complete stagnation, Adam Lymburner was sent to England by the merchants of Canada to represent their case before the home government, to support their petition for representative government, and to obtain certain alterations in the commercial laws. Lord Dorchester, the Canadian governor, recommended him as a decent, sensible man who had no hostility towards the colonial government. Dorchester considered that both the French and the English in the council were extreme in their views, the French endeavouring to maintain intact the antiquated French laws of the old régime, and the English demanding their complete repeal in everything beyond the domestic relations of the habitant. Dorchester still favoured the maintenance of the French feudal system as naturally allying itself to an administrative despotism, which, though benevolently inclined in his case, was liable to become more arbitrary under his successors. He admitted, however, that a change in the laws had become necessary, especially since the influx of the loyalists, who objected even to George III disguised in the constitutional robes of Louis XV.

The changed relations of Canada to the southern English settlements greatly influenced both French and English elements in the Quebec council. Each knew that the more completely the French systems of land tenure, civil rights and commercial law were maintained, the less inclined would the British element in the United States be to come to Canada,

as many of them were otherwise desirous of doing. The consciousness of this rejoiced the French Canadians as much as it exasperated the English. British sympathizers in the Eastern States, having waited vainly for some assurance of a change in the Canadian laws and form of government, and having finally lost hope of any British future for Canada, made their way across the Alleghanies and along the south of the Great Lakes to lay the foundations for the Middle West of the United States, from which in coming years so great an Anglo-Saxon superstructure of business and population was to be reared. Naturally, the French in Canada were as greatly relieved at this diversion of the tide of British population as the English were chagrined and disappointed.

Dorchester's Committee on Industry

In November 1786 Lord Dorchester appointed a Committee of Council to undertake a special investigation of trade and industry with a view to raising it out of the hopeless stagnation into which it had fallen. This committee invited the merchants of Quebec, Montreal, and Three Rivers to give their views on the situation, and on their special reports the committee based its general report, which was submitted to the governor on May 29, 1787.

The committee pointed out in its report, that during the American War the outward trade of the province was almost wholly restricted to Britain, and that as yet there had been very little change since the peace. Apart from manufactured goods, which naturally came from Britain, there had been a slight development of trade with the West Indies in such articles as rum, sugar, coffee and molasses. From the West Indies the duty on rum was 6d. per gallon and on molasses 4d. per gallon, while from Britain rum was free. The natural consequence was that most of such articles came to Canada from the West Indies by way of England, and, in fact, it was with this object that these differential duties had been imposed. Obviously, such a roundabout trade furnished a great deal more employment for British ships and sailors, and the object of the policy was thus realized. The extra expense to Canadians was, approximately, an addition of 6d. per gallon

on rum and 4d. on molasses, and direct trade between Canada and the West Indies was proportionately discouraged and smuggling from the adjoining American ports promoted.

The merchants entered a mild protest against this heavy taxation on their trade, pointing out that since the American colonies had achieved their independence they were at liberty to distil their own rum from free molasses, and supply their fishermen on the coasts and their Indian traders in the interior. This American rum was supplied at just half the cost at which the Canadians were forced to obtain theirs.[1] It was little wonder, therefore, that the Americans controlled the fishing industry, and were likely soon to control the Indian trade with the West. The committee represented it as quite obvious, also, that cheap American rum put an irresistible premium on smuggling, especially as it was difficult to prevent it along so extensive and unguarded a frontier.

Already, as we have seen, the idea had been put forth by the merchants that Canada should be made the highway between the interior states and the outside world. American produce should be sent to foreign markets by way of the St Lawrence route. This idea was now enlarged. The merchants said that American goods, when sent through Canada, should be accepted in Britain and in other ports of the empire as Canadian goods. Moreover, the merchants, recognizing the advantage to the province of exporting flour instead of wheat, desired the privilege of importing American wheat to be ground into Canadian flour for export. They expected to find a market for this flour in the Maritime Provinces, where fisheries were to be developed as a result of the influx of loyalists from New England.[2]

In spite of the drastic regulations intended to force the West Indies to trade with the northern colonies instead of with the United States, the Canadian committee did not expect much trade with the West Indies. The merchants of

[1] The importance of the rum trade will be appreciated when it is understood that at this time rum was considered to be the most essential of all the necessaries of life imported into the colony.

[2] It will be noted that this report annunciates for the first time a general policy that has been specially advocated and partially carried out at intervals from 1787 to the present day.

the tropics desired their food supplies regularly and at frequent intervals. From Canada this was impossible, navigation being suspended for about five months in the year, and the produce of the Canadian harvests being available only in the autumn.

The merchants objected to having their trade with Spain, Portugal and the Mediterranean carried on by way of English ports in order to make it subservient to British shipping and customs interests. They were willing that British vessels only should be employed in carrying their wheat and fish to the ports of southern Europe, and in bringing back wine and dried fruits from those markets; but the ships should be allowed to sail directly between Canadian and southern European ports, and not be forced to call at ports in Britain. The value of the cargoes exported from Canada to southern Europe was considerably greater than the value of the goods brought back, and the surplus went to pay for British goods required in Canada. Direct trade would therefore be to the advantage of the English merchants.

The Fur Trade

The fur trade was still the most important branch of Canadian commerce; hence the committee of merchants urged that trade regulations should be made to foster it, or at least should not place special restrictions upon it.

Friction had arisen from the enforcement of the military instructions that no western trade by way of the lakes should be carried in any other than government vessels. The object of this regulation was to prevent traders from carrying their furs to the Americans for the sake of the higher prices to be had. The sailing arrangements of the government vessels and the accommodation they afforded were frequently very inconvenient for the merchants. Complaints followed, with numerous refusals to pay freight charges. Several attempts were made to carry on the trade independently of the king's vessels. The merchants, however, were not all of the same opinion as to the date when free navigation of the lake should be resumed. The question was further complicated by the controversy between the British and United States govern-

ments as to the carrying out of the treaty of 1783, which provided for the transfer to the United States of the western posts of Carleton Island, Oswego, Niagara, Detroit and Michilimackinac.

The Montreal merchants, who were chiefly interested in the fur trade, pointed out that the western traders were at this time (1787) indebted to them to the extent of £300,000 for advances made. About £125,000 of this was due from the traders between Cataraqui and Detroit, and £175,000 from those at Michilimackinac and the western regions tributary to it. They represented that it would take at least two years to collect these debts, and that, therefore, the western posts should not be given up within that time, otherwise much of their investment would be lost. It was estimated by the committee of 1787 that about three-fifths of the western trade in point of value was conducted by way of the Ottawa, and two-fifths by way of the Great Lakes. Because of these conditions it would be inimical to British interests to give up the posts at this time. As a pretext for delay it was pointed out that the Americans had broken faith with Britain in their treatment of the loyalists. The matter was finally set at rest by Jay's Treaty in 1794.

The policy of free trade with the Indian territories had the same consequences under English as under French rule. Competition led to an increase in the employment of liquor as the most attractive bait for the Indian. It also involved the employment of additional traders to scour the woods in search of the Indians, who were offered higher prices for their furs. These conditions in turn led to the rapid demoralization of the Indian, to lawlessness, fraud and conflict. This suggested to Alexander Henry the elder, Joseph and Thomas Frobisher and others who were trading around Michilimackinac in 1775, that co-operation was more desirable than competition. Accordingly they created a community of interests and conducted their business on a co-operative basis. They reduced expenses, gave the Indians more useful goods and less rum, and little or nothing on credit. The results were increased profits and reduced risks to the members of the company, and longer if less hilarious lives

to the Indians. This company was the forerunner of the North-West Company, established by merchants of Montreal in 1783, in which Henry and the Frobishers became partners.

The former route to the West, by way of Rainy River and Rainy Lake, being interfered with by the new boundary-line between the United States and the British possessions, it became necessary to discover a new route from Lake Superior to the Lake of the Woods, whence the usual connection was made to the West by way of the Winnipeg River. This new connection was established by way of Lake Nipigon and the northern chain of smaller lakes and streams between it and the Lake of the Woods. The trade was divided into two sections. Heavy canoes managed by eight or ten men took the goods by way of the Ottawa route as far as the head of Lake Superior. From there lighter canoes managed by four or five men distributed the trade throughout an ever-extending range of northern and western waters. This expansion eventually brought the traders of the North-West Company into contact, and afterwards into conflict, with representatives of the Hudson's Bay Company.

The North-West Company desired to obtain a monopoly for ten years of the trade by the new route to the West, in order to carry out their enterprise with safety and efficiency and to protect themselves from the encroachment of the American traders, who were certain to resume their western traffic after the peace which granted their national independence. The company promised to undertake at its own expense the exploration of the whole of the North-West country between latitudes 54° and 67° to the Pacific Ocean, and to provide the government with maps of the region and a detailed account of its natural resources. It urged the necessity of preventing the Russians and the Americans on the Pacific coast, and the latter in the interior, from gaining control over these new regions to the detriment of British interests. The government seems to have been very loath to grant specifically any such extensive monopoly. The North-West Company, however, managed to establish a virtual monopoly by rendering it unprofitable for any others to enter the field in competition with it. Owing to the mutual freedom

of trade with the Indians, granted to both parties by the treaty of 1783, the North-West Company extended its trading operations to the south as far as the mouth of the Ohio River and to the north-west as far as Lake Athabaska.

The great advantages enjoyed by the Canadian traders over the Americans were very clearly set forth by James McGill, one of the partners in the North-West Company, in 1785. He pointed out that the water routes to the Indian countries, whether by the Great Lakes or the Ottawa, all led to the ocean through Canada. The Canadians, therefore, could furnish European goods at the western posts at much cheaper rates than those afforded by the Americans because the cheapest goods were of British manufacture, and the cost of transportation for thousands of miles from the ocean was all to the advantage of Canada. Similarly, as regards the export of furs, the Canadian company could afford to outbid the Americans because of its advantages in transportation, and London afforded much the best market in the world for furs. There could be little inducement, therefore, he argued, to Canadian traders to sell their furs to Americans. On the contrary, the Americans had strong inducements to sell to Canadian traders and take their supplies from Canadian posts. McGill's predictions were completely fulfilled. The Canadian merchants and transporters held a virtual monopoly of the inland American trade tributary to the lakes until the construction of the Erie Canal (1825), which—occurring before an adequate improvement of the St Lawrence route—reversed the advantage and diverted nearly all of the American and a great part of the Western Canadian trade through American channels.

The Movement for Commercial Freedom

In the report of 1787 the merchants' committee sought not only freedom from vexatious trade restrictions, but specific encouragement for certain industries, such as those of hemp, flax, flaxseed, potash, wheat, flour, whisky, lumber and naval stores generally. An interesting anticipation of the modern system of the inspection, grading and storage of grain in elevators was presented by the Quebec and Montreal

merchants. The idea had been first suggested during the period of scarcity of 1779-80, but nothing definite had been done. They recommended the erection of public grain-storage buildings with well-qualified storekeepers, who should inspect all grain received, clean it, grade it and store it, the grades to be known as numbers 1, 2 and 3. Wheat thus stored should be delivered to those holding the receipts for the different grades, certain deductions being made for waste and shrinkage. Grain not officially graded and certified should not be exported. These pioneer grain elevators were to contain from ten to twenty thousand bushels each. This idea, together with some further financial developments, was revived later by Governor Simcoe in Upper Canada.

The Quebec Committee of 1787 also revived the proposal, already referred to, for the incorporation of a Chamber of Commerce, with special powers to sit as a board of arbitration in commercial disputes, and to make various regulations for the benefit of trade, navigation and insurance. As before, the object of this was to escape the very unsatisfactory conditions of Canadian law and justice in regard to economic and commercial matters.

As we have seen, the original policy of the home government with reference to the States of the American Union was practically one of non-intercourse as between the British and United States possessions in America. Owing to vigorous representations from Canada, however, and as the result of the report of the committee of 1787 on the political conditions and the trade of the colony, a more flexible attitude was adopted, and the Quebec provincial council was permitted to deal with certain phases of inland trade between the United States and the British provinces.[1] The first Canadian measure for regulating trade between Canada and the United States was passed by the Quebec council in 1787. This provided for the importation of tobacco and of potash by

[1] The possibility of trouble with Spain, and the uncertainty as to the attitude of the United States, led the British government to alter its attitude towards the proposals of the United States government for freer trade relations, and ultimately led to the acceptance of Jay's Treaty of 1794.

way of Lake Champlain and the Richelieu. In the following year another ordinance relating to the inland commerce of the province ventured to recognize that, under due restrictions, commercial intercourse with the neighbouring states might prove useful to the province and beneficial to Great Britain. The Canadians were thereafter to be permitted to export to the adjoining states, by way of Lake Champlain and the Richelieu route, all ordinary goods, the product of the province or such as might be lawfully imported into it. Exception, however, was made of beaver skins and other furs. A detailed list was given of the articles which might be imported from the neighbouring states. This may be summarized as including all kinds of timber and naval stores, such as hemp, pitch, etc., all kinds of grain, dairy products, live stock, and other natural products of the country, also gold and silver coin or bullion. Genuine settlers were permitted to bring in their personal effects. Rum, spirits, manufactured goods, and all other goods not mentioned in the preceding lists were prohibited. In 1790 pig iron from Vermont was added to the list of permissible imports, and in 1793 wampum was also included.

Jay's Treaty

The treaty of 1794, commonly known as Jay's Treaty, was the first commercial treaty between the United States and Great Britain. It provided that the western posts in United States territory—which, as we have seen, had been held by Britain since the treaty of 1783—should be given up within two years. Free intercourse between the people of the United States and those of the British provinces, including Indians, was provided for. United States vessels were still excluded from the seaports of the British American colonies, but inland navigation, including navigation of the Mississippi, remained free to both parties. All goods not prohibited from entering the British colonies might be imported from the United States by land or inland navigation subject to the regular duties on such goods coming from Europe. Similarly, goods might freely be sent to the United States from British territory by land or inland navigation subject to no higher

duties than were paid on European goods imported by American vessels at the Atlantic ports. No duty was to be levied by either party on furs or on goods belonging to the Indians. The port of St Johns on the Richelieu was declared to be the sole port of entry for all goods coming from the United States by land or inland navigation, and there the appointed duties were to be paid.

The treaty provided that additional articles might be added to it from time to time by mutual consent. An explanatory article was added in May 1796, stating that various agreements made between the United States and certain Indian tribes were not to be understood as interfering with free trade between the Indians and either of the high contracting parties.

An act of the legislature of Quebec was passed in 1796 authorizing the lieutenant-governor by order-in-council to alter any clauses in the existing acts or ordinances relating to trade with the United States which might prove to be inconsistent with the treaty. This act, which held good for a year from its date, was renewed from year to year thereafter until 1801. Similar acts were passed in Upper Canada and renewed yearly, until European complications intensified the friction between Great Britain and the United States which finally culminated in the War of 1812.

III

ECONOMIC EFFECTS OF THE PARTITION

Results of the Constitutional Act

THE Constitutional Act of 1791, by dividing Quebec into two provinces, coincident, as nearly as possible, with the distribution of the two races, and by granting representative government to each, professedly gave the French a dominant voice in Lower Canada and the English a corresponding control in Upper Canada. Pitt, the prime minister of the day, defended this act by stating his belief that within a short time the French Canadians, seeing the superiority of English laws and institutions in the upper

province, would voluntarily adopt the English system in the lower province, and thus secure that national unity and harmony so indispensable to stable government and economic progress. This professed expectation had not the remotest chance of being fulfilled. The granting of representative government, coupled with the partition, made certain a continuation in Lower Canada of the racial conflict which had been frankly accepted under the Quebec Act. By giving the French Canadians an overwhelming control in the House of Assembly, the British government faced the necessity of a choice between two evils. Either it must give up Lower Canada as an English colony or maintain English ascendancy by an English majority in the legislative council and in the executive government. To abandon Lower Canada to the French meant the loss of Upper Canada to the Americans ; hence the government chose virtually to break faith with the French Canadians in order to preserve its Canadian colonies. A conflict between the two races, with political and economic stagnation, naturally followed, not only within the province of Lower Canada, but between that province and Upper Canada. As a consequence of its geographical position the upper province was placed at the mercy of Lower Canada in its trade relations, and it was made to feel this very keenly in the matter of the regulation of its imports and exports. Only the close association between the English majority in Upper Canada and the commercial interests in Montreal and Quebec, which were strongly represented in the legislative and executive councils of the lower province, tended to mitigate the strife which was inevitable between the two provinces.

After 1791 the economic conditions of Canada were continually governed by the differences in laws and policy as between the two provinces. One of the first acts of the Upper Canada legislature was to substitute English for French law in all civil cases, and therefore in all matters relating to property, industry and commerce. In the lower province the provisions of the Quebec Act remained in force, and were not seriously interfered with for some time. It is safe to say, however, that if the French majority in that province had been free to deal with their own laws as they wished, they

would doubtless have amended and improved them, as had been done in France itself, so as to bring them into harmony with the progress of economic and intellectual life. But, since most of the changes in the law were proposed by the English commercial class, they were commonly resisted as a feature of political strategy. The ancient laws of New France were defended and maintained, not because of their intrinsic value, but as indicative of French nationality. Being forced into an attitude of self-defence, the French Canadians elevated systematic reaction into an ideal, to which they deliberately sacrificed the general welfare of the country and their progress as a people. Thus the very slow development of Canada in all that distinguishes a progressive people was not due to any lack of native ability on the part of its citizens of either race, or to any lack of natural resources in the country ; it was entirely due to the unfortunate policy of the British government, which had at once tied the two races together and yet prevented their union and co-operation as one people.

As yet domestic tariffs had little to do with the regulation of trade. Trade regulation was reserved for the action of the imperial government. The Canadian tariff was employed mainly as an agent for the raising of provincial revenue. Local direct taxation, even for municipal purposes, was very unpopular with the French Canadians and for a long time was not seriously advocated. The general financial policy of the provinces is dealt with in another section of this work, but it is necessary here to trace the influence of certain tariff measures on the trade of the provinces with the outside world.

Interprovincial Trade Difficulties

Under the Constitutional Act of 1791, as was pointed out by some of the critics of that measure, no adequate provision was made for regulating trade between the two provinces, or the trade of the upper province with the world at large. Yet it was obvious that the trade of Upper Canada must be conducted through the ports of Montreal and Quebec, which controlled the St Lawrence route. Hence one of the first questions which arose between the two provinces

related to the right of the lower province to levy duties on goods imported through it for the upper province. If the lower province could levy tribute on these goods, the people of Upper Canada would be taxed once for the benefit of Lower Canada and again to provide revenue for their own provincial needs. On the other hand, the Montreal merchants and members of the North-West Company, who were sending large quantities of goods through Upper Canada to the western posts, would require to pay an extra duty on this merchandise passing to the West. Similarly, the lower province might levy a tax upon the goods of Upper Canada on their way to European markets. A tariff war was thus threatened between the two provinces, but the commercial interests in both, which were certain to be the chief sufferers, managed, with the assistance of the executive government, to effect a working compromise.

Under the arrangement arrived at, the upper province agreed to forgo the right of levying import duties at its boundaries on condition of receiving one-eighth of the net proceeds of the duties levied upon goods entering Lower Canada. One consequence of this arrangement was that the revenue of Upper Canada depended entirely upon the tariff policy and financial needs of Lower Canada. The agreement made was continued in force until 1796. At the end of this period the question was reopened, and commissioners appointed to arrange a basis of agreement for a further period. The problem proved to be one of growing difficulty, but, after prolonged discussion, the commissioners agreed upon the following basis. Trade between the two provinces was to remain free. The legislature of Lower Canada would be allowed to fix and levy a reasonable tariff upon imported goods, and to allow to Upper Canada its just proportion of the revenue thus obtained. To determine this proportion an office should be established at Coteau du Lac on the upper St. Lawrence at the boundary of the two provinces. Here would be ascertained the amount of dutiable imports passing from Lower to Upper Canada in the course of a year. The office would also secure a record of goods entering Upper Canada from the United States and passing on to Lower

Canada. Returns of this traffic would be furnished twice a year to the governments of both provinces. The legislature of Upper Canada was to impose upon all dutiable goods coming into that province from the United States the same scale of duties as was levied upon goods entering Lower Canada from the United States. When the balance was struck between the dutiable goods passing westward and eastward across the provincial boundary, Upper Canada should be paid its due proportion of the revenue collected.

The agreement proposed was to remain in force for four years from March 1797. The legislature of Upper Canada declined to ratify this agreement, chiefly because of the necessity for adopting the same tariff on goods from the United States as that adopted by Lower Canada. The Hon. Richard Cartwright, one of the three commissioners from Upper Canada and the leading merchant and shipper in that province, was convinced from the evidence which he had obtained from all parts of the frontier that a tariff against the adjoining American settlements could not be enforced ; and that, even if enforced, it would certainly be to the detriment of the commercial interests of the province, which greatly benefited by their command of the American business to the south of the lakes. He pointed out that large quantities of British goods, imported by way of Montreal and Kingston, passed to the new American settlements on the borders of the lakes. Transportation was, naturally, much cheaper by the St Lawrence waterway than by the overland route from Albany. He estimated the value of British goods annually passing to the United States by the lake route as at least £60,000 sterling. In return Canadians obtained large quantities of furs and other acceptable produce. It was, therefore, much more to the interest of the British and Canadian merchants that the American settlers should be dependent upon Britain and Canada for their manufactured goods, than that they should be forced by the action of the provincial governments to open up and maintain communication with the manufacturers and traders of the eastern states.

The Upper Canadian commissioners managed to post-

pone action for a time. Meanwhile statistics as to the extent of the trade between Upper Canada and the United States were collected at Kingston, Niagara and Detroit, the three chief points of convergence for all through-traffic between the two countries. When the returns for the year (1797) were completed, Cartwright's estimate of £60,000 was found to be below the mark, the actual trade amounting to about £100,000, or half a million dollars. As the commissioners pointed out, the trade with the United States had greatly increased in consequence of Jay's Treaty of 1794, and was entirely in favour of Canada. As most of this trade, both upward and downward, centred in Montreal, benefit to the lower province was obvious.

The evidence and arguments submitted by the Upper Canadian commissioners were admitted to be unanswerable, and the agreement was ratified without requiring the upper province to impose duties upon American produce so long as the Americans refrained from imposing duties on imports from Upper Canada.

In many ways the situation was anomalous. By admitting British goods into their western settlements duty free, these districts of the United States were distinctly sacrificing the interests of their eastern merchants, who were required to pay heavy duties on British goods imported through the Atlantic ports. The merchants of New York, Albany and other points on the western route naturally protested against the abandonment to the Canadians of the growing western trade to the south of the lakes. Congress was unable to disregard the powerful interests of the East, and before 1801 the standard American duties were, nominally at least, imposed on all dutiable goods coming from Canada. In consequence of this action the Upper Canadian legislature was required by its agreement with Lower Canada to enforce the Lower Canadian tariff against products from the United States. Smuggling, as Cartwright had predicted, was extensively carried on. The net result was that much of the trade between the two countries was necessarily left to the ingenuity and enterprise of a much lower type of international trader than formerly.

From 1801 the agreement as to the distribution of the tariff revenue between Lower and Upper Canada was continued from one four-year period to another until 1818. It was far from satisfactory to the representatives of Upper Canada, but no acceptable changes could be effected. The French-Canadian majority in the House of Assembly in Lower Canada, chiefly representing rural districts whose people were largely self-sustaining as to their products, were not at all interested in the development of the commerce of the country, and they were still very much opposed to any suggestion of direct taxation. They insisted upon having their roads and bridges, their court-houses and gaols and other local conveniences paid for out of the taxes on foreign imports, which were consumed chiefly in the English settlements or were employed in trade with the Indians and Americans. In Upper Canada, on the other hand, the farmers, while at first inclined to make local improvements a charge upon provincial funds to a certain extent, soon adopted the method of meeting them out of local rates, even to the payment of the sessional indemnities of the members of the legislature.

When, in 1805, the legislature of Lower Canada levied a special additional rate on imports from the United States in order to provide funds for local improvements, the legislature of Upper Canada declined for a time to enact a similar law. The result was that a large amount of easily transported goods, such as tea, came from the United States through Upper Canadian ports. In 1807, however, to avoid a threatened rupture with the lower province, corresponding duties were adopted under strong protest. The troubles with the United States, culminating in the War of 1812-15, suspended for a time the financial difficulties between the provinces. Following the re-establishment of international peace, interprovincial financial hostilities were resumed, and ultimately became so acute that the British government had to intervene with the Canadian Trade Act of 1822.

Trade Relations with the United States

Though no direct trade was permitted even under Jay's Treaty between the maritime ports of British North America

and United States ports, yet, owing to the unsettled boundary-line among the islands of Passamaquoddy Bay, a lively trade was carried on between the smaller vessels from Nova Scotia and New Brunswick and American merchants. The Americans exchanged East and West Indian products and British and American goods for furs, fish, lumber, staves, grindstones and gypsum. These were carried to the American ports and from there taken in assorted cargoes to the West Indies. Here again, although British shipping suffered somewhat, the colonies of Nova Scotia and New Brunswick and the British West Indies greatly benefited, eagerly availing themselves of the transportation facilities to obtain higher prices for their products and cheaper rates for their supplies.

The gypsum, or plaster of Paris, trade from the Bay of Fundy was at this time in a very flourishing condition. It was used in the United States as a fertilizer on the better American farms. Nova Scotia being then the only known source of supply, it was claimed by some of the more ardent imperialists to have been undoubtedly placed there by Providence as a reward for the sufferings of the loyalists. Their only regret was that its transport to the American markets was not strictly reserved for British vessels.

After the American Revolution, while British seamanship and enterprise were as capable as they had ever been, the British navigation laws and the colonial system were hopelessly out of adjustment with the conditions of the commercial and shipping world. On the other hand, the Americans, being free from these limitations, were able to adjust themselves to the actual economic conditions of the world, and, being a neutral power in the midst of European conflict, could serve as a common carrier for the chief trading nations, of which Britain was at the time much the most important. The alarm of certain short-sighted British interests over the increasing extent to which the Americans were conducting certain lines of British trade enabled the enemies of both to set these natural allies by the ears, and caused the issue of the British orders-in-council following the treaty of 1783. After much tribulation Britain regained her mercantile and

naval supremacy, not by enforcing but by abandoning the policy of her ancient Navigation Acts, which had long outlived the stage of their usefulness. This change was brought about, after much controversy, by William Huskisson, the real successor of Pitt. On the other hand, the Americans lost their mercantile leadership, not by adhering to their earlier and more liberal policy, but by abandoning it and adopting that which Britain had just discarded. The positions thus reversed have remained, with all their respective consequences, to the present time.

Though the trade and prosperity of the British North American colonies and the British West Indies were very intimately bound up with this larger movement of world policy, yet these colonies themselves had at this stage little or no voice in their external trade relations.

It has always been more or less difficult to determine, on the one hand, how much of the Canadian exports were of American origin, and, on the other, what quantity of Canadian products found its way to the outside world through American channels. So also with the imports, it has been difficult to determine what proportion of the imports to Canada has remained in the country and what proportion has passed ultimately to the neighbouring states. In their report for 1797 the commissioners gave the quantities of goods passing over the Niagara portage and consigned to merchants on the American side of the river at Detroit, namely 43,668 gallons of liquor, 2611 packages of general merchandise, the latter valued at £52,220, and 261 barrels of salt. These were exclusive of goods consigned to Michilimackinac. Of the peltry coming from the American side for this year there were 2616 packs from Detroit and 3210 packs from Michilimackinac. From the latter place, however, many others went to Montreal by way of the Ottawa route.

Cartwright, in a letter to a business associate in 1797, gives a summary of the economic condition of Upper Canada and its relations to the United States. The year had been a rather poor one for the Canadian farmers owing to the ravages of the Hessian fly and the partial failure of the crops. The purchasing agent for the government, who took practically

all of the supplies available for export, obtained only about 2000 quintals of flour, for which he paid $4.00 per cwt. For peas he paid $1.00 per bushel. The American garrisons and other settlements to the south of Lakes Ontario and Erie had been supplied with provisions from Upper Canada, and the rates paid were considerably higher than those at which the government agent purchased. Breweries and distilleries recently established had consumed a considerable quantity of grain. Flour was selling in Kingston, which was the central market, at 22s. 6d. currency, equivalent to $4.50 per cwt. An increase in the quantity of pork available for market was expected that year. During the previous year it had sold at $26.00 per barrel, and an equally high price was expected during the current year on account of the sustained demand from the American settlements and the Canadian lumber camps. The American demand he considered to be only temporary, for in a few years they would be sending provisions to the Canadian market. He estimated the exports of potash at 150 tons. A large quantity of squared oak timber and about 400,000 staves, all of the best quality, had been sent to England. About two-thirds of the potash and nearly all of the lumber came from the eastern part of Upper Canada. As yet no potash had been made or lumber exported from any point west of the Bay of Quinte. All potash was inspected and lumber culled at Montreal previous to export. All imports were obtained through Montreal merchants, who unpacked and examined them after their sea voyage. When repacked they were shipped in bateaux from Lachine to Kingston, where those for the western posts were transferred to vessels which took them up Lake Ontario to Queenston. From there they were carted to Chippawa or Fort Erie, and reshipped in other vessels for Detroit and Michilimackinac.

Growth of Trade

The usual method of doing business from the upper province may be summarized as follows: the merchants west of Montreal sent their orders to their correspondents or agents in Montreal, who imported the goods from London

and became personally responsible for them to the London merchants. The Montreal merchant forwarded them to the upper province for a commission of 5 per cent on the English invoice. The western merchants made their payments to the Montreal agents and had no direct dealings with the London merchants. In exporting furs and potash the western merchant paid a commission of 1 per cent on their estimated value to the Montreal agent, but if the goods were sold in Montreal the commission was 2½ per cent.

The trade of Upper Canada rapidly expanded, the value of exports from that province for 1801 being estimated by Cartwright and McGill as amounting to £105,000 currency, or $420,000. The total value of British imports, one-third of which was made up of furs, from Canada for that year was estimated by McGill of Montreal as £600,000 currency. The amount of Canadian produce sold to the British government as stores for the local garrisons, etc., was estimated at another £600,000, making £1,200,000 or $4,800,000 currency, for which bills could be drawn on Britain to pay for Canadian imports and other obligations.

In 1803 Vansittart, of the British Treasury, wrote to the lieutenant-governor of Upper Canada, Peter Hunter, with reference to the possible supply of provisions from the Canadas for the king's troops in the West Indies. Hunter, in turn, applied to Cartwright as the man best acquainted with such matters. Cartwright replied that at some time in the future the Canadian provinces would doubtless be able to furnish all the flour, pork and beef required by the troops, not only in British North America but in the West Indies, but at that time they were far from being able to do so. The supplies of salt pork and beef in particular were dependent upon three conditions : first, good harvests of grain and hay ; second, a certain, steady market ; third, suitable means of transport to the West Indies. At the time there was little shipping owned in Canada and little direct intercourse with the West Indies. In Cartwright's opinion the Canadians should first aim at supplying their own garrisons, then those of the Maritime Provinces and Newfoundland, after which they might extend their supplies to the West Indies.

Up to the time of the War of 1812 most of the commerce in Canada had been carried on by a system of more or less direct barter, each merchant combining in himself the functions of wholesale and retail dealer and supplying a large range of goods. He was also the chief purchasing agent for whatever the people of the district had to sell or which the local merchants could dispose of to the central merchants of Kingston, Montreal or Quebec, or the chief ports of the Maritime Provinces. The merchant, moreover, was the banker and clearing-house for the neighbourhood. A man who had a credit balance with a store, equivalent to a bank deposit in later times, was accustomed to pay his neighbours for services or supplies with orders on the store, which enabled them to procure the indispensable dry goods, groceries or hardware. Among the chief articles accepted from the settlers by the storekeeper were potash, butter, cheese, wheat, flour, pork, furs, lumber, staves, and sometimes timber and fish. These constituted the chief Canadian exports, as well as the supplies furnished to the British garrisons in the country. The settlers confined themselves almost entirely to the production of raw materials for export, upon which they depended for the purchase of all manufactured goods. The result was that during the first decade of the nineteenth century the merchants of Quebec, Montreal, Kingston and other similar centres of British population were becoming more and more involved in long credits to their customers, and were being forced in turn to make corresponding requests for credit upon those wholesale houses in Britain from which the imported goods were ultimately obtained. In time this led to an increasing number of bankruptcies among the smaller Canadian merchants. As the bankruptcy law, especially in Lower Canada, was of a very unsatisfactory character, much expense and ultimate loss was occasioned to the British merchants. The inevitable result was that Canadian mercantile credit suffered severely and the Canadian people eventually paid dearly for their impaired credit.

To a certain extent the financial embarrassment of the more progressive portions of Canada was due to the fact that

the people who were attempting to develop the country were inadequately furnished with capital. It proved impossible for them to procure at once the means of life and the amount of fixed capital required for the permanent development of the country. In other words, to convert the forest wilderness of Canada into cultivated districts with comfortable farm buildings, villages, mills and connecting highways involved the sinking of very large amounts of capital in more or less permanent improvements, the returns from which must extend over many years to come. But the payments for imports had to be made at the time, and not from the slow returns on invested capital, however necessary or ultimately profitable the investment might be.

One of the few fragments of good luck which the ill wind of the American War wafted to Canada was the stimulus given to shipbuilding at Quebec and St John, which were conveniently situated for procuring suitable timber. The foundations of the shipbuilding trade laid at this time served to maintain this industry in a more or less flourishing condition until the advent of iron and steel ships propelled by steam revolutionized the shipbuilding trade of the world.

Abuses of Land Allotment

During the French régime the land had been granted in seigniories. Between the Cession and the Quebec Act of 1774 lands were granted under the English system of free and common socage. After the passing of the Quebec Act the French tenure was once more resumed, so that when the loyalists and disbanded troops were brought to Canada as settlers they had to accept their lands under the French tenure with all its feudal usages. This arrangement occasioned many vigorous protests on the part of the loyalists and other settlers until the division of the province in 1791 enabled them to introduce both English law and land tenure in Upper Canada. Afterwards, in Lower Canada, grants were made partly under the French and partly under the English tenure.

Under the general instructions as to land-granting, issued in 1791, it was required that a settlement should be made

on all grants, otherwise the lands would revert to the crown. With a few minor alterations these general instructions continued in force until 1826. Nevertheless certain peculiar practices developed which greatly affected the working out of the policy. One of these was the system of obtaining grants in groups through the agency of influential persons known as leaders. The professed object of this system was to enable a number of associated settlers to obtain grants of lands in the same locality. The idea was good enough when properly carried out. It appears to have originated in Lower Canada, the first case on record being that in which Thomas Dunn of Quebec obtained on behalf of himself and associates, in 1796, the grant of a whole township, hence named Dunham.

This system being once introduced, its speculative possibilities in the hands of resourceful manipulators enjoying the necessary political favour were soon recognized. In the first place, immediate settlement was gradually evaded. Then, the associates were mere tools of the leaders, through whose political influence alone they could hope to share in the public lands. The associates were to receive equal shares in the grants, but they agreed when signing the memorial to accept but a small share of the allotments, deeding the remainder to the organizers. Thus a grant of 1200 acres to a leader and to each of his associates frequently resulted in the associates obtaining 200 acres each and the leader his own 1200 acres and 1000 acres from each of the associates. Still later the associates were simply dummies, who for a small gratuity agreed to act the part of associates and to transfer the whole of their shares to the leader. In this way various leaders had managed to obtain from 12,000 to 48,000 acres, or from a quarter to the whole of a township. Under Sir Robert Shore Milnes, lieutenant-governor of Lower Canada 1799-1803, no less than 1,425,000 acres had been granted to sixty persons.

After 1806 the more glaring abuses of the system were somewhat abated. In 1818 the system of issuing location tickets was generally adopted. The object of this was to ensure actual settlement on the land. The persons who were ultimately to be granted lands were given at first merely

location tickets, giving them the right to enter upon the 200 acres of land specified in the ticket. Only after four acres were cleared, a house built and settlement made was the settler able to exchange his location ticket for a regular title to the land. Even this system, however, was soon manipulated by the speculators with more or less official connivance. First, the regulation was modified to permit some one other than the owner to perform the settling duties. Next, it was taken for granted that if the clearing was made and a house built settlement had been effected. Thus, by hiring persons to slash and burn four acres on each 200 acres, and to erect on the clearing the simplest log shack which would pass muster for a house, an indefinite number of 200-acre lots could be acquired. Of course, these holes in the woods were soon choked with a dense second growth of worthless scrub, much more difficult to clear than the original forest.

The large tracts of land thus monopolized by favoured speculators, when taken in connection with the clergy and crown reserves, constituted a very large proportion of the land available for settlement, and very effectively discouraged the normal development of the country. It is rather significant that almost the only portion of the Eastern Townships which exhibited any degree of prosperity consisted of a row of townships along the American frontier accessible to the American settlements and markets.

In Upper Canada, in addition to these conditions, special grants of 1200 acres were made to certain professional classes, such as magistrates and barristers. Grants of 5000 acres were made to executive and legislative councillors, and 1200 acres to each of their children.

This general system remained in force until 1825, when the Canada Company obtained large tracts of land under special conditions of colonization. Some of the operations of this company were afterwards severely criticized, but the fact remains that it brought to Upper Canada a large proportion of the best elements in its population, and did much to stimulate a more reasonable and effective system of land settlement. It is true that the company was frankly actuated

by commercial motives, but its chief executive officers were sufficiently intelligent and far-sighted to recognize that the better the class of immigrants they brought to the country, and the more prosperous the settlements, the larger and more certain would be the returns to the company. The very effectiveness of their methods constituted the basis of most of the criticism levelled against them on account of the profits obtained. At the same time many short-sighted and over-greedy speculators, who in paralysing the settlement of the country impoverished and bankrupted themselves, came in for much unmerited sympathy on account of their reputed misfortunes.

IV

ECONOMIC RESULTS OF THE WAR OF 1812

ECONOMICALLY the War of 1812, like that of the Revolution, was a veritable godsend to Canada. The centres of trade and industry were untouched by actual war, while they were greatly benefited by the lavish expenditure of the British military chest for the purchase of military and naval supplies, and the employment of all forms of labour at high rates of remuneration. Instead of depending upon distant and fluctuating markets for the sale of their surplus products, the settlers had an almost inexhaustible demand for everything they produced provided at their very doors.

Merchants who were on the verge of bankruptcy in 1811 were in a few years in easy circumstances and later in affluence. The farmers and settlers not only received high prices for their produce, but obtained ready employment for themselves and their horses during their spare time. They were thus enabled not only to liquidate their debts to the merchants but to purchase freely new goods. The chronic custom of asking and granting long credits was largely abandoned, and short credits and cash payments were substituted.

Though direct trade between Britain and the United States was greatly impeded by the war, trade between Canada

and the United States received a corresponding development. Much of this, it is true, was contraband according to the laws of both countries, but it was connived at almost universally, not only by those immediately interested, but by those whose chief duty it was to see that such trade was suppressed. Even at those points on the frontier where hostilities were constantly expected, the commanding officers of both American and British troops conveniently placed the telescope to the blind eye while provisions of various kinds, including supplies for the troops, were transported across the international line.

One rather unfortunate consequence for the future was that during this period of quite exceptional prosperity a considerable proportion of the Canadians acquired habits of speculative business and extravagant tastes. These they found it rather difficult to abandon when the peace of 1815 dried up the fertilizing stream which flowed from the British military chest and the colony had to depend once more upon its own natural resources and its connection with foreign markets.

Canada, having become a land of high prices and being generously supplied with British coinage, continued for some time to be an attractive market for American produce, much to the encouragement of the agriculture and trade of the neighbouring states, which were not so fortunate—or unfortunate—as to have enjoyed the bounty of so lavish a foster-mother as the British Treasury.

With the narrowing of the commercial field the Canadian merchants became more anxious about the conservation of the markets of their own country. They began to protest against the share of Canadian trade enjoyed by the Americans of the neighbouring states. Even before the War of 1812 the conditions of the period and the scattered settlements along the Canadian frontier had encouraged the growth of the hawker or pedlar. This picturesque itinerant tradesman travelled with one or two horses attached to a covered van, which was a veritable general store on wheels. It was more or less completely supplied with dry goods, tinware, lighter hardware and other household supplies, together with cheap luxuries in the way of fancy goods and jewellery, and even

school-books. In return for these wares they took, preferably, cash, for which they made a special price. In default of this, however, they accepted various kinds of portable produce, especially furs and hides. Giving no credits, having limited expenses, and bringing their goods directly to the doors of the purchasers, they were welcomed by the settlers and drove a thriving trade which cut very seriously into the business of the local retailers, who were left with long credits and bad debts. The disadvantage of the retailers reacted on the wholesale merchants, and their joint agitation led to the enactment of special laws for the discouragement, if not the suppression, of the hawker and pedlar, particularly those from the adjoining states.

The treaty of 1815, which re-established intercourse between the United States and Great Britain and her colonies, granted to each of the contracting parties the treatment of the most favoured nation. In the trade between British European possessions and the United States no distinction was made between the vessels of one or the other nation in carrying their own goods directly to and from the other. But in the case of intercourse between the United States and the British West Indies and British North America, trade regulation was entirely at the discretion of either party. The ports of the East Indies were open to American vessels trading directly between those ports and the United States, but taking no part in the coasting trade of the East Indies. This was made possible by the changes which were introduced into the charter of the East India Company when it was renewed in 1813.

Trade between the British provinces and the United States being subject to the discretion of either party, the different provinces might pass acts regulating this trade without reference to each other. The Canadian provinces, however, passed acts leaving the regulation of trade and intercourse to the executive government. In consequence trade was regulated by orders-in-council, which suspended the acts previously in force and established a new tariff. Under this new tariff the export of furs was once more prohibited. They might be imported, however, free of duty. The new duties

were partly specific and partly *ad valorem*, and averaged between 30 and 35 per cent, 30 per cent being the rate for all unspecified goods. On the free list were wheat and other grains, potash, timber, lumber and staves, live cattle, beef, pork, cheese and other provisions. This free list was evidently intended to make Canada as far as possible the channel of intercourse between Britain and the western regions of Northern America. American vessels exceeding five tons burden, on entering Canadian ports on the lakes, were required to pay 13s. 6d. currency, or $2.50, per ton.

This tariff rather more than fulfilled expectations, since, as already observed, for a time after the war a brisk trade in all forms of natural produce developed between the American and Canadian ports of the Great Lakes and the St Lawrence. During the winter months, when land transportation was easy, this trade extended far into the interior of the neighbouring states. Fish from Boston was sometimes sent to Montreal by the overland route, a distance of 500 miles. Frozen meat of various kinds came from far inland. In return the Americans took back a good deal of money while it lasted, but chiefly such British goods as were not subject to duty in Canada and which, though heavily dutiable in the United States, very often escaped duty when entering by the overland route.

V

BRITISH COMMERCIAL POLICY IN AMERICA

The Mother Country and the Colonies

THERE was still an element in Britain opposed to any intercourse between the British colonies in America and the United States, under the impression that such intercourse lessened British trade. It was held that British shipping should maintain a monopoly of the colonial trade and transportation. In brief, the idea still prevailed, and was frequently upheld with all necessary details, that the development of the colonies and their trade must be conditioned entirely by the extent to which they contributed

directly to the prosperity of Britain. It must be admitted that the advocates of this prevailing view did not shrink from recognizing the corresponding obligation on the part of Britain to finance the defence of the colonies, and to undertake, at the expense of the British government, considerable public works in the colonies where they appeared to be necessary to the development of British trade interests. The policy of the British government was, therefore, definitely directed to prevent the United States from sharing in the trade of the West Indies and the northern colonies, notwithstanding any proof that might be given of the benefits which would accrue to the colonies themselves.

In spite of past failures, already referred to, the northern and tropical colonies were to be forced to depend upon each other for their necessary supplies, and all goods beyond these were to be obtained from Britain alone. To require the colonies to take their manufactured goods from England presented no real hardship, because Britain still produced the best and cheapest goods to be had. Similarly, the virtual confining of the colonies to the British market for the disposal of their surplus products afforded little or no hardship. For most of their products the British market was the most advantageous. In one very important line of colonial produce, however, namely wheat, flour and other grains, the British market was not open to the colonies, since the admission of agricultural products was considered to be prejudicial to the landed interests, which were then dominant in British politics, and secured the passing of the drastic Corn Law of 1816. Such grain as went from British North America to the English ports simply passed through in bond, being shipped chiefly to Mediterranean ports. But the attempted limitation of the West Indies to the British North American colonies for their supplies of timber, staves, flour, fish and other provisions, and the limitation of the northern colonies to the British West Indies for their sugar, molasses and rum, presented real hardships, which stunted the development of both sections of the empire and indirectly, as the sequel proved, of the mother country itself.

When Pitt had opened the East India trade to American

vessels it was found that, being free from the trammels of the Navigation Acts and the charter of the East India Company, the Americans could furnish East Indian goods cheaper to the West Indies and British North American colonies than could the British merchants in British vessels. After the treaty of 1815, therefore, the question soon arose whether Pitt's policy should be reversed and the old colonial system re-established, or whether the British vessels and the colonial merchants should be freed from these ancient trammels and permitted to compete on even terms with the Americans. The reactionary policy was stoutly advocated by the older and more conservative interests. The more recently developed commercial and manufacturing interests, however, which had already proved themselves the mainstay of England during the recent world-struggle, and were giving their country new claims to the leadership of the world, contended as vigorously and with more practical argument for the development of a freer trade. The parliamentary leader of this progressive element was the Right Hon. William Huskisson, member for the rising commercial and shipping centre of Liverpool.

The Canadian merchants were, on the whole, strongly in favour of a freer intercourse with the United States, as being beneficial alike to their import and export trade. The maritime colonies of Nova Scotia and New Brunswick, on the other hand, were more doubtful of the results, being inclined to claim a monopoly of the West Indian trade in the way of supplies of food products and lumber.

The enforcement of the British Navigation Acts after the peace of 1815 had resulted in the exclusion once more of American vessels from the ports of the British North American colonies. After unavailing efforts to have these conditions modified, the American government adopted a similar policy towards British vessels trading between the British colonies and the United States. This act was to come into force on September 30, 1818. There was, in consequence, a very brisk trade with the American ports during September. Just before the American act came into force a British order-in-council made Halifax and St John free ports for American vessels carrying certain specified goods which were essential

as West Indian supplies. By this method it was hoped to obtain the necessary American supplies and yet preserve the carrying trade for British vessels. The Americans, however, took measures to prevent this evasion of the real issue.

The Timber Question

This unsatisfactory aspect of international trade relations happened to coincide with a severe commercial depression. The question of the treatment of colonial timber, which had been taken up in 1817, was still unsettled. A select committee of the House of Lords appointed to deal with it made its report in 1820. At the same time a select committee of the House of Commons was going into the whole question of the maintenance and, if possible, improvement of the foreign trade of the country. The first report of the Commons committee was presented in 1821. It dealt largely with the timber trade of British North America. From these reports we learn that the object of the system then in force had been to protect and encourage the trade in timber, lumber and other forest products of the American colonies, and, incidentally, to raise a certain revenue from the import taxes on other timber. At the time of the troubles with the United States just before the War of 1812, the British supply of timber, then obtained chiefly from the United States, was in danger of being cut off, and to encourage the colonies of New Brunswick, Nova Scotia and Canada to produce a larger supply, a virtual exemption of duty was granted on the timber imported from these provinces. At the same time a considerable increase in duty was levied upon timber brought from the north of Europe. The total duty levied amounted to £3, 5s. per load. Influential members of the committee were already strongly under the influence of the teachings of Adam Smith, and advocated that timber should be obtained from any country where it was cheapest and best. At the time of the imposition of the special duties in 1809 the greater part of the British imports of timber was obtained from the northern countries of Europe. The expected result of the heavy duty, however, was realized, and increasing quantities of timber came from British North America. As it was conceded that

the cheapest and best wood came from Northern Europe, although the soft white pine from America was more easily worked and freer from knots, the effect of the special duties was to establish a heavy preference on timber from British North America, which resulted in the payment by Britain of a heavy bounty to these colonies. The only benefit to Britain was a certain independence of the foreigner in procuring supplies of timber, then so essential to shipbuilding.

Of course, one immediate result of the bounties had been to divert into the colonial timber industry a considerable amount of British capital, alike in England and the North American colonies. As usual in such cases, it was the reluctance to disturb those vested interests which prevented the parliamentary committee from recommending the discontinuance of the differential duties upon which the colonial timber trade entirely depended. It was considered, however, that the bounty thus established was unnecessarily large, and that a great deal of it went eventually to the United States, whence much of the timber was derived. The committee finally recommended a reduction in the duty from £3, 5s. per load to £2, 5s. Allowing for differences in freights between British American ports and the Baltic, it was estimated that this would leave a margin of £1, 10s. in favour of the American colonies.

As much of the bounty went to the United States, the committee recommended that timber entering Canada by the inland routes should be subjected to a duty, but this in turn was opposed by powerful vested interests in Upper and Lower Canada dealing in American timber, and no change in tariff was made.

The timber question, thus adjusted, remained on the new basis until the next commercial depression in 1835, when another committee of the imperial parliament once more took the matter up, and recommended a further reduction of 15s. in the preferential duty, bringing the duty down to £1, 10s. per load.

Huskisson's Progressive Programme

Having observed the principles upon which the government proceeded in the special matter of the timber trade, we

are in a better position to understand the policy adopted in 1825 with reference to the general colonial system. The chief exponent of this change of policy was William Huskisson. The object of the proposed change in the historic British policy in regard to the colonial and foreign trade was to bring the policy of the empire into harmony with the changed conditions of the economic world in industry, trade and shipping.

In 1822 two comprehensive acts (3 Geo. IV, caps. 44 and 45) had been passed. The first regulated the trade between the British possessions and the other countries in America; the second the trade between the British possessions in America and the rest of the world. These two acts repealed a long list of previous acts regulating the trade of the American colonies.

As we have seen, trade between the British possessions in America and foreign ports in America had been confined to British vessels. This restriction the Americans had resented. From American ports, both before and after the Revolution, had come most of the supplies for the British possessions, particularly for the West Indies, which were seriously affected by the restriction, and might have been reduced to actual starvation but for the beneficent relief afforded by smuggling. To meet this undesirable situation the acts of 1822 were passed.

Britain now admitted other nations to share in the colonial trade on reciprocal terms. The first act permitted the importation of certain articles from either North or South America into specified ports of the British possessions in America, either in British vessels or in the vessels of the countries of which these goods were the growth, product or manufacture. Similarly it permitted the exportation of any articles the growth, product or manufacture of British possessions in America from the same specified ports directly to foreign countries or possessions in America. Among the articles permitted to be imported to the British colonies were many products of the colonies themselves, but none of the manufactures of Great Britain. The products of the fisheries were not included because the domestic supply was sufficient, but grain and flour, meat and all forms of timber and lumber,

as yet not being produced in sufficient quantities in the northern colonies to meet the needs of the British West Indies, were placed upon the list of permissible imports. Such imports, however, to the British possessions from foreign countries were required to pay a certain uniform duty under imperial authority, except where an equivalent duty was levied by any colony authorized to pass revenue acts. The imperial government required no duty to be paid on such goods when taken from one British possession to another. The possessions themselves might levy moderate duties for revenue purposes, subject to the approval of the home government.

Only British vessels were permitted to carry goods from one British possession to another or between these possessions and the mother country. All the special privileges granted by this act to the vessels and goods of foreign countries on entering British possessions were required to be conceded to British vessels and goods on entering these foreign countries. Otherwise these privileges would be suspended, and intercourse with any country not reciprocating might be suspended entirely. Among the British North American ports opened for this traffic were St John and St Andrews in New Brunswick, Halifax in Nova Scotia, Quebec in Canada, and St John's in Newfoundland.

The second act (cap. 45), covering the trade between the British American possessions and Europe, enacted that trade should no longer be limited to European countries south of Cape Finisterre, but might take place directly with the northern countries, provided that the carrying of the goods should be confined entirely to British ships. Thus United States vessels might engage in trade between their own ports and the West Indies, but German or Dutch vessels might not trade between Germany or Holland and the British possessions in America.

In explaining these acts Huskisson made it plain that the chief object in view was to promote a freer trade with the United States. After three years' experience of these acts a still more radical measure was advocated by Huskisson in an amending act of 1825.

Huskisson's new programme involved, first, a change in the relations of the colonies to the mother country ; second, a freer admission of such goods and raw materials as were essential to the leading manufacturing industries of Britain ; and, third, the relaxation and revision of the Navigation Acts.

It had long been the settled policy of Europe, including England, to exclude the colonies of the respective countries from commercial intercourse with any other country or colony except the mother country and its possessions. This principle had governed also in international law, and in consequence it was maintained that neutral nations during a war could not take part in the colonial trade of other nations, because during peace they would not be permitted to do so. This system, however, had been broken up, first, by the English colonies securing their independence as the United States, and, later, by the Spanish, Portuguese and French colonies in America either achieving or being granted their independence. These new conditions rendered it impossible for Britain to maintain the old system with reference to her remaining colonies in America. They must be permitted to trade freely with the other parts of America, otherwise their natural opportunities for prosperous development would be greatly cramped, to the injury of England and the advantage of other countries.

Huskisson proposed to meet this by throwing the colonial trade open to all other countries, to be conducted either in British vessels or the ships of the foreign countries. The trade between Britain and the colonies and between the colonies themselves was to be restricted, however, to British or colonial ships. Thus trade within the empire was to be considered as a coasting trade and confined to British vessels. The colonial trade now to be opened to foreign countries would be subject to certain moderate duties over and above any duties levied by the colonial governments, and the proceeds of these duties should go into the treasuries of the respective colonies. This, it was considered, would reconcile them to the imposition of duties by imperial acts. The duties thus levied by imperial act on foreign trade would constitute a preference on all trade within the empire.

It was proposed also to extend to certain colonial ports

the privileges of the bonded warehouse system with a special view to the encouragement of trade with the South American countries, which had recently established their independence. This would enable the smaller vessels from the seaports of British North America and the West Indies to make up for the South American ports a miscellaneous cargo, consisting chiefly of their natural products and goods from Britain taken from the bonded warehouses, and not, therefore, burdened with import duties.

Under the old system the British colonies were at a serious commercial disadvantage in their foreign trade, as compared with the United States. The traders of the United States were at liberty to exchange their cargoes for any foreign goods. If they traded in South America, for instance, they might sell the goods obtained there in Europe and bring back to America any European goods. The British colonial trader was permitted to sell in foreign countries on the same basis as the United States trader, but he was restricted to a narrow list of foreign goods which he might take in exchange; and if he traded in South America and sold his South American cargo in Europe, he was still further restricted in the goods which he might bring from Europe, the object being to confine the purchase of European goods to British markets alone. Under the new system introduced by Huskisson practically all of these restrictions were removed.

This enlarged programme of reciprocal trade was to be accomplished, in part at least, by the act of 1825 (6 Geo. IV, cap. 73) for further regulating the trade of the British possessions in North America and the West Indies, and for the warehousing of goods in bond at various colonial ports. The United States government, however, was not satisfied with the limited trade permitted to their vessels as compared with the British vessels trading to and from their ports. American vessels could carry their own goods only, but not the goods of other colonies, of Britain itself, or of foreign countries. They declined, therefore, to comply with the reciprocal conditions laid down by Britain. Huskisson's scheme for reciprocity was therefore withdrawn during the following session of 1826, and a period of commercial dead-

lock, tempered by extensive smuggling and a roundabout trade through Canada, was again entered upon.

During the session of 1825 Huskisson had a special proposition to make with reference to Canada which involved nothing less than a serious infringement of the corn laws, so sacred in the eyes of the British agrarian interests, still the all-powerful element in the British parliament. He proposed to admit at all times Canadian wheat on payment of a fixed duty of 5s. per quarter. This was intended to relieve Canada from the frequently disastrous uncertainties of the sliding scale of duties then in force, which, under certain conditions, resulted in the prohibition of imports and the consequent holding of grain in bonded warehouses for years.

The effect of the previous sliding scale of duties upon the Canadian agricultural interests and the grain dealers had been set forth in 1821 in a number of resolutions passed by the leading merchants and others of Montreal. It was maintained that the agriculture and commerce of Canada were threatened with destruction unless the ports of Britain were constantly open to the grain and flour of the British provinces. The usual argument as to the value of the Canadian market for British goods was added. The relatively small quantity of Canadian grain available for export, it was urged, could not seriously hurt the agricultural interests of the mother country. The freights from Canada, it was pointed out, amounted to a further protection to the British farmer of from 12s. to 15s. per quarter. These resolutions were made the basis of petitions to the home government. The uncertainties of the trade were further revealed in the season following the sending of these resolutions, when the ports of Britain were opened to Canadian and American grain owing to the scarcity of grain in Europe. Prices rose from one-quarter to one-third in Canada, and freights, being much in demand, went up to extravagant rates because little more than a fraction of the grain could be got out before the ports were closed by ice. The chief benefit, therefore, went to the United States. The agitation was continued by the Canadian interests, much to the disgust of the high protectionists in England, some of whom frankly advocated the disposal to

the United States of so troublesome and unprofitable a region. Huskisson, however, took up the question in favour of Canada and brought in his measure for the permanent admission of Canadian wheat at all times at a fixed duty of 5s. per quarter.

Needless to say, the radical nature of this change in the British colonial and protective systems excited much opposition from the special interests which were favoured by the old system. The bill, nevertheless, safely passed the House of Commons, but, when it reached the House of Lords, though not thrown out, its operation was limited to one year. In that shape it became law as 6 Geo. IV, cap. 64. As no great disaster followed, such as the anticipated flooding of Canadian markets with smuggled wheat from the United States, the act was renewed for another year. After much correspondence with the Colonial Office through the Canadian governor-general, a change in favour of Canada was made in 1827, when the act was renewed again ; the 5s. rate applied when wheat was below 67s. per quarter, and when above that only a nominal rate of 6d. was levied. This arrangement continued until 1842.

Owing to the constant smuggling of tea, silk and other East Indian goods from the United States ports, which enjoyed a direct trade with the East Indies, an agitation was started in both Canada and the Maritime Provinces to secure the privilege of a direct trade between the East Indies, including China, and the ports of the British North American provinces. As a result of this movement a British act was passed in 1824 authorizing the East India Company to send ships directly from their East Indian ports to the British colonies. In August 1825 the first sale of East India Company teas, brought directly to Canada, took place in Montreal. The new policy appears to have been very effective for a time in checking smuggling from the United States. American policy was thus once more instrumental in securing for the colonies a measure of greater freedom in their external trade.

VI

IMMIGRATION AND LAND SETTLEMENT

Early Policy and Experiments

THE revival of interest in colonial matters from 1822 to 1825 led incidentally to an increased interest in the subject of immigration. Many were the plans for the joint purpose of relieving distress in Britain and furnishing settlers for the British colonies by a state-fostered and directed system of immigration. This whole question was the subject of investigation by a special committee of the British House of Commons in 1826, accompanied by the issue of a number of private reports and pamphlets. Naturally enough, perhaps, the side of the question which attracted most attention from influential classes in Britain was that of getting rid of surplus population. In many quarters the poor rates were becoming a heavy tax upon property. Whether the failures among the people of the British Islands would make successful and resourceful settlers in Canada was very slightly considered. It seemed to be an accepted principle that the wards of the poor-law guardians and the petty criminals of the towns and cities, when transported to the free, open spaces of the colonies, would, as a matter of course, become honest, sober, industrious and resourceful settlers. They were expected to prove excellent first settlers in the wilderness, and suitable parents for the future citizens of the colonies as well.

Of the numerous experiments in immigration made between 1826 and 1832 it may be said in general terms that once more, and on a much more extensive scale, the results of the earlier experiments were manifested from the Bay of Fundy to Lake Huron. Biological laws and the inexorable limitations of heredity manifested themselves in every case. The results in the planting of human beings were just as certain as the results in the planting of fruit trees and the grain and garden seeds they brought with them. From the pauper, the weak-minded, and the petty criminal stock sent

out in connection with certain government experiments, only the same varieties reappeared in the following and succeeding generations ; while from the sturdy and self-reliant elements sent to other parts of the country the finest stock in many parts of the Canadian provinces may still be traced.

Many and vigorous were the protests sent from the older settlers and the authorities of the Canadian and Maritime Provinces, both local and provincial, against the poorer specimens which were located in their neighbourhoods, which in so many cases became a heavy burden upon the industry of the country, as well as a menace to the morals of the neighbourhood and a danger to life and property. The vessels conveying the less desirable immigrants to British North American ports were of such a character that the contemporary descriptions of the filth, disease and immorality which prevailed on board many of them are almost incredible, were it not that corroborative accounts are given by responsible authorities at such widely separated ports as Halifax, St John, Miramichi, Quebec and Montreal.

The exposure of the conditions of this period led to a thorough investigation of the situation and a very great subsequent improvement, although, as we shall see later, many of these evils reappeared in an aggravated form in the late 'forties.

At an early date the United States had undertaken to protect itself against the state-aided export of the lower orders from Britain. This was accomplished by more or less drastic laws prohibiting the landing of paupers and criminals from the Atlantic vessels, and compelling the officers and owners to return such people at their own expense.

As an indication of the great expansion of immigration during the period from 1826 to 1832 we may take the numbers of immigrants arriving at Quebec each year, which were as follows :

1827, . .	12,648	1830, . .	28,000
1828, . .	12,084	1831, . .	50,254
1829, . .	15,945	1832, . .	51,746

About two-thirds of these immigrants were from Ireland ;

two-thirds of the remainder were from England; while about one-tenth of the whole were from Scotland.

The prevailing system of settlement in the Canadas, more particularly Upper Canada, was still that of finding the settlers employment with pioneer farmers for the first season or so, and thus enabling them to learn the operations of clearing land, beginning its cultivation, erecting cheaply furnished houses, and starting upon what was termed a bush farm.

A subject of frequent discussion at this time, and one of permanent interest in relation to the relative development of the two countries, was the marked difference, as between British North America and the United States, in the character of their immigrants, and the influence of this difference on the settlement and the basis of progress in the respective countries. It was found that immigrants with a certain amount of capital, with professional training, or with special technical skill preferred, as a rule, to go to the United States, while the poorer settlers and those without trades constituted the larger portion of the Canadian immigration. The explanation is to be found in several conditions relating to the method of reaching the country, the treatment on arrival and the opportunities afforded to individual enterprise.

The absence of any state-aided immigration system in the United States and the operation of such a system in directing Canadian immigration accounted in large measure for the stream of poorer immigrants being directed to Canada. In Canada the government works—most of the larger ones, such as the Rideau Canal, being financed entirely by the British government—afforded immediate employment for the poorer immigrants, whereas in the United States every man required to find employment for himself. In Canada also, owing to a change in the land-granting system, lots of not more than 50 acres could be had for settlement at very moderate fees, whereas in the United States much higher prices were paid for both private and public lands. On the other hand, owing to the rapid development and greater enterprise in the United States, people with capital found many opportunities for its profitable employment. A large and varied

employment of capital afforded openings for skilled workmen and for those with professional and technical training. Almost all the contemporary records of those who had visited both the British provinces and the adjoining states record the contrast between the rapid development, speculative enterprise and many opportunities for men of means in the United States, and the more conservative progress, the slight encouragement to enterprise, and the limited opportunities for the employment of capital or the exercise of special training in Canada. The two contrasting systems once fully established, they tended to perpetuate themselves for several decades, and not until about the close of the nineteenth century did Canada become an attractive field for investment by both British and American capitalists, and, consequently, also an attractive field for the more enterprising types of immigrant.

Lord Durham found it necessary to advocate for Canada a continuance and even extension of the prevailing system of state-aided immigration. In his Report he makes the broad statement: 'I can scarcely imagine any obligation which it is more incumbent on Government to fulfil than that of guarding against an improper selection of immigrants, and securing to poor persons disposed to emigrate every possible facility and assistance from the moment of their intending to leave this country to that of their comfortable establishment in the Colony.' The unfortunate experiences of the commuted pensioners, who were sent to Canada in 1832-33 to the number of about 3000, illustrated the defects of the existing system, and gave the country an advertisement of a very undesirable character.

In the decade from 1827 to 1837 political disturbances and the stagnation of the country caused a great many Canadian immigrants to pass on to the United States, where opportunities were greater in both range and volume. A well-informed observer, George Forsyth of Montreal, estimated 'the proportion of immigrants from Britain who proceed to the United States at 60 in 100 during the last few years.' This tendency to go from Canada to the United States, established during the unfortunate period of the

'thirties, continued more or less during the following couple of decades. The records of the period show that a very considerable proportion of the immigration which built up what are now the middle western states of Ohio, Indiana, Michigan, Illinois, and parts of Wisconsin, Minnesota and the Dakotas, originally came to Canada, but passed on to the United States owing to the evil reputation as a field for settlement which the Canadian territory had acquired.

Colonization Companies

The successful operations of the Canada Company in connection with land settlement have already been mentioned. Many of the immigrants brought by this company possessed at least a moderate amount of capital, which enabled them to become successful farmers within a reasonable time. The Canada Company was formed in England in 1824 and incorporated by royal charter in 1826. It was formed to take over a considerable section of the crown lands, especially in Upper Canada, and to colonize these with a class of immigrants whose individual successes would be an indispensable condition of the financial prosperity of the company. Settlements established by the company were soon among the most prosperous in the country, and the character of the settlers is sufficiently evidenced by the important positions in every sphere of Canadian life held by their descendants. The most important centres of the early activity of the company were Guelph and Goderich, and, later, Stratford and St Mary's.

A similar company, known as the British American Land Company, was established in Lower Canada. After protracted negotiations with the home government, during which numerous attempts were made by the provincial assembly of Lower Canada to defeat its plans, it managed to obtain a charter in 1833. The lands obtained by the company were situated in the valley of the St Francis River, and amounted to about 800,000 acres. In spite of steady opposition the corporation flourished from 1833 to 1836, establishing a very considerable number of good settlers on its lands. The establishment and operation of this company

was one of the chief grievances alleged by that section of the French Canadians who fostered the rebellion in the lower province.

The evils of the older forms of land-granting were even more severely felt in New Brunswick and Nova Scotia, owing to the greater part of the valuable land of these provinces having been granted to individuals and companies resident in England. The attempt to recover the lands by process of escheat, on the ground of non-fulfilment of the settlement conditions, was first made in Nova Scotia. This took place before the American Revolution. After it many of the original grants were resumed by the crown and regranted to the more influential loyalists. In Upper Canada and Prince Edward Island the system of levying a special tax upon the land was resorted to in order to compel the owners of wild lands to bear a fair share of the local improvements. In Prince Edward Island the landlords were sufficiently influential to have the measure disallowed, but in Upper Canada it went into operation from 1820. There the sheriff was authorized to sell lands for taxes when they remained unpaid for eight years. The tax, however, was very light, amounting to only 1s. 8d. per hundred acres. Yet even so moderate a tax caused many tracts of land to be thrown upon the market, with the consequence that a second generation of speculators came into possession of large tracts of land sold for taxes.

In summing up the general ill-effects upon the British North American provinces of the prevalent methods of disposing of the public lands to speculative favourites, many of them non-resident, Charles Buller stated in his report to Lord Durham in 1838 :

> Capital and labour have been wasted, settlement has been prevented, or, after a brief attempt, has been abandoned, immigration has been checked, and of the immigrants who have reached the colonies more than one-half have sought refuge in the United States ; there are not and there cannot be any efficient means for the administration of justice, for education, for religious instruction ; few public works are undertaken, and those which have been commenced have been and are carried

> on languidly and wastefully, and there is everywhere a lamentable deficiency of all those circumstances which indicate or advance civilization.
>
> It would be perhaps beyond the truth to attribute all these evils to the manner in which the land has been disposed of, . . . but indisputably the main and primary cause has been the provisions of government in the disposal of the public lands.

The remedies which he proposed were to enforce the process of escheat of the lands of those who did not fulfil the conditions of settlement, and to introduce an efficient system of taxation which would either lead to the breaking up and settlement of the lands, or at least require the holders to contribute a fair share towards the construction of roads and the provision of schools and other conveniences essential to an elementary stage of civilization. He considered also that the whole management and disposal of the public lands and the regulation of immigration should be placed in the hands of a central commission with subordinate branches in each of the provinces.

VII

TRADE STRUGGLE WITH THE UNITED STATES

A Reactionary Movement

As we have seen, at the close of 1825 the British provinces enjoyed a special preference in the British grain market and in the West Indies. They enjoyed both a bounty and a preference on the timber sent to Britain. The colonies had also been granted certain freer trade relations with other parts of the world. In so far as Britain enjoyed any preference in the colonial markets up to this time, it had certainly represented little or no disadvantage to the colonies. They assuredly could not have obtained their manufactured goods cheaper from other markets than those of Britain. At the same time very large sums, drawn from the pockets of the British taxpayers, were being expended in the colonies in support of military establishments, and in the construction

of fortifications and public works for the improvement of internal communication. The East and West Indies may indeed have had some cause for complaint, but the British North American colonies were certainly very generously treated by the home government in all trade and financial matters. Under these circumstances it was perhaps natural enough for the home government and its representatives in the colonies to consider that colonial policy and the general process of internal administration should be determined by the imperial authorities, and not by the members of the popular assemblies in the colonies. The expectations of the home government, however, were not in accordance with British human nature or British history. The political discontent in the colonies developed almost in proportion to the bestowal of British economic favours upon them.

It is to be observed that the policy of Huskisson and his followers, which led to special preferences being granted to the colonies, represented merely the initial stages of a general movement for the breaking down of the older system of commercial restraint. Thus what was at first merely a preference to the colonies was to end in a general liberty to the people of Britain to purchase their food and other supplies in the most advantageous markets, whether colonial or foreign. Freedom of trade naturally involved a corresponding political freedom, which, when granted to the colonies, was soon followed by the abrogation of the special economic preferences which had been merely incidental to the gradual liberation of both the home country and the colonies from the distasteful bonds of the old colonial system.

The commercial depression in Britain in 1827-28 gave the opponents of the imperial policy of Huskisson an opportunity, by no means neglected, to organize a reactionary movement towards the re-establishment of the colonial and other restrictions so lately discredited and in some measure abolished. They succeeded in strengthening the sentiment in favour of the corn laws, which had been very vigorously assailed by the leaders of the reform movement.

This reaction in British policy affected particularly the relations between Britain and the United States, which were

in a fair way to be adjusted on a mutually beneficial basis in 1825. An order-in-council was issued (July 27, 1826) excluding, from December 1 following, all vessels of the United States from a number of colonial ports, including those of the West Indies, South America, Newfoundland, West Africa, and the Cape of Good Hope. In all other seaports, including those of British North America, there was levied a special duty of 4s. 3d. sterling per ton on all American vessels, and an increase of 10 per cent on all goods imported from the United States to these colonial ports. The British government declared that it had now reverted to the old colonial policy, which maintained that the trade of the British colonies was an exclusively British preserve; other nations were admitted simply as a matter of favour, and not of negotiation on the grounds of mutual advantage. It was held that foreign countries must simply accept, without question, any concessions made to them. The Americans, however, took the ground that the trade between the United States and the British possessions was one of mutual advantage, and should be conducted on the same terms by both American and British vessels. An act of Congress was proposed for the regulation of trade and shipping between the ports of the United States and the British colonial ports. It did not pass, however, and the president was thrown back upon the terms of the 'London Convention' of 1818. A proclamation was issued in 1827 which, in conjunction with the British order-in-council, completely paralysed all traffic between Canada and the United States.

In anticipation of this condition there had been a great increase in the imports from the United States to the West Indies and the Canadian towns. Before the next year indirect channels were once more established, and the trade between the United States and the West Indies was resumed, although at greater cost to both countries. Among these indirect channels were the ports of the Maritime Provinces, especially St Andrews and St John. Through these the greater part of the trade between Britain and the United States passed. At the same time an act of the British parliament authorized the free importation overland into Canada

of staves, masts, lumber of all kinds, horses, ashes, and provisions of various kinds, and the subsequent admission of these articles into Great Britain and the West Indies as if they were products of the British colonies. The extra expense involved in these roundabout methods was, of course, borne by the people of both countries, and was estimated at 50 per cent on lumber and 15 to 20 per cent on provisions. The trade in certain perishable provisions between the United States and the West Indies was unable to survive this process, and dropped out of the competition altogether.

Effects of the Struggle

The general effect of this commercial struggle with the United States, though obviously disadvantageous to both countries, was on the whole more injurious to the United States than to Britain. Van Buren, the secretary of state at Washington, in a dispatch to the American minister in London, admitted that the American trade to the West Indies had become completely demoralized. No direct trade was being carried on in either direction. Such American goods as reached the West Indies passed either through the British North American provinces, or in foreign vessels to the other West Indian islands and thence to the British islands. West Indian goods, on the other hand, came only by fraud in foreign vessels as the product of foreign countries.

It was admitted that the previous American administration had been too exacting in its demands upon the British government, and had made a serious mistake in not accepting the proposals of Huskisson. These conditions the new administration, under President Jackson, was willing to accept in 1829. The American government was even willing that the British provinces should enjoy a preference in the ports of the West Indies, provided the United States enjoyed the same freedom in the colonial trade as was granted to other foreign nations. These proposals were acceptable to the British government and the people of the West Indies, but the Canadian provinces and the ports of the Maritime Provinces objected to losing the incidental benefits of the abnormal, roundabout traffic which had been forced into

their territory owing to the complete stoppage of direct trade.

The protests of the Canadians delayed negotiations and roused a spirit of retaliation in the United States. Congress was strongly urged to prohibit all trade with the Canadian provinces, which would have effectively deprived them of the incidental advantages which they sought to retain. President Jackson, however, managed to temporize pending the outcome of the negotiations with Britain. In the discussions which ensued the Canadian interests were, naturally, strongly allied with the reactionary element in Britain, and a considerable section of the British shipping interests was on the same side, as it profited by the extra carrying involved in sending American goods to the West Indies by way of the St Lawrence. On the other hand, the rising manufacturing interests in Britain were in favour of a freer trade, recognizing that they suffered from all trade restrictions, especially those imposed on their intercourse with the United States. In the end the more liberal interests carried the day, and in 1830 arrangements were made for the resumption of direct trade relations with the United States.

On the whole Britain had scored her point. At the same time it is rather significant that, although British commercial policy was still dominated in shipping matters by the old Navigation Acts, which were held to be the bulwark of British commercial success, yet at this time the direct trade between Great Britain and the United States was conducted in vessels of which four-fifths of the tonnage was American and one-fifth British. Only after the abolition by Britain of the Navigation Acts (1849), and the adoption of a restrictive policy by the United States, did British shipping come to the front and secure that supremacy which it has ever since retained ; while the United States during the same period lost its ascendancy in shipping and has never since regained it.

One of the unexpected consequences of the resumption of direct trade with the United States was that, instead of Canadian trade suffering as had been expected, it entered upon a period of prosperity and expansion unknown since the War of 1812. The years 1831-33 were exceptionally prosperous

for Canada, in this respect reflecting the joint advantages accruing to both Britain and the United States. In fact, from this time on to the end of the century Canadian prosperity and depression were entirely coincident with similar conditions in Britain and the United States. This, of course, was but natural, seeing that Canada was not as yet a country of original production and consumption, but depended entirely upon the trade of these allied countries alike for its markets and supplies and for the capital required to carry on Canadian industry. When, therefore, depression began in Britain in 1834 and extended to the United States in 1835, it passed on to Canada from both countries, culminating in the commercial crisis of 1837, which, taken in connection with the domestic political troubles, precipitated the rebellion in both Lower and Upper Canada.

Industry, Wages and Prices, 1825-36

In 1825 the population of the British North American colonies, afterwards united into the Dominion of Canada, was about 900,000 souls, of whom the Canadas contained 582,000. In 1831 the population had increased to 1,400,000.[1] This relatively rapid increase gives ground for believing that, had the expansion of the country been fostered by a wise land-granting system and proper administration, Canada might have kept pace with the development of the adjoining regions of the United States. As we have seen, a very large proportion of the immigration to the adjoining states passed through Canada, where much of it undoubtedly would have remained had the inducements to settlers been as liberal as in the United States.

In 1828 about one-quarter of the British exports were sent to colonial possessions, chiefly to the East and West Indies ; about one-sixth of the colonial trade was with the British North American provinces. After 1830 trade with the West Indies fell off considerably. At first trade with the

[1] On the basis of expansion during this period Joseph Bouchette estimated that within fifty years, or about 1881, British North America should contain a population of at least 16,000,000. As a matter of fact there were only 4,324,810 people in the Dominion in 1881.

United States declined also, but soon rose again. Canadian trade with Britain steadily increased from 1828 to 1836, with the exception of the year 1832, when it was interrupted by the cholera.

Among the exports of Canada various forms of timber and lumber continued to hold a leading place. This industry occupied a peculiar position, inasmuch as most of the capital employed in it was owned beyond the country, and the chief profits went to outside capitalists and shipowners. Canadians secured only the wages of the labour employed and the profits on some of the provisions supplied. Unfortunately, a large share of these profits was drawn from the sale of intoxicating liquors. The labour connected with the lumber industry was of a very fluctuating character. Socially it was of little benefit to the country, as it militated against stability of family and social life and the permanent settlement of the country. Too often the wages received were consumed in strong drink and riotous living when the lumbermen returned to what is conventionally termed civilization. Those who were interested in the general welfare of the country were already very critical as to any permanent benefit which might result from the timber trade.

Through the operations of the timber and lumber dealers many of the finest forest areas were entirely destroyed, without furnishing good lands for settlement or capital for the country's development. In dry seasons devastating fires followed as a matter of course, destroying much more timber than had been cut. The timber merchants, who chiefly profited from the industry, retired after a short residence in Canada, taking their capital with them, while large numbers of the Canadian population were demoralized in their habits and died in poverty. Thus for at least the first half of the nineteenth century, apart from the business of the smaller local saw-mills furnishing a variety of lumber for building purposes, Canada undoubtedly lost much more than she gained through the development of the timber industry. Similar remarks apply to considerable sections of New Brunswick, especially along the rivers devoted to lumbering.

For most of this period the timber industry depended almost entirely upon the British preference and bounty. The transportation interests connected with it doubtless gave employment to many British ships, and occasionally assisted in stimulating the building of a rude type of vessel at Quebec.

A much more profitable and permanent form of industry was that connected with the numerous flour-mills distributed throughout the country. In a great many cases these mills furnished centres around which grew up thriving towns in Upper Canada. Frequently associated with these flour or 'grist mills,' as they were called, were breweries or distilleries and woollen mills. In the latter the wool brought in by the farmers was cleaned, carded, and either converted into rolls for home spinning, or made into thread for home knitting or weaving, or still further manufactured into heavy fulled cloth, or worsted, for winter wear. The garments for either men or women made from such cloth were not perhaps very elegant in form, more particularly as the tailoring was apt to be of an amateurish, domestic type, but at least they were admirably adapted both to the climate and the hard wear they had to endure. In the towns and cities, especially throughout Upper Canada, imported cloth came gradually into general use, and at the same time many improved grades of domestic manufacture were produced. As late as 1831 in Lower Canada the number of private looms was estimated at 13,500. Practically all cotton fabrics were imported, as was also most of the linen cloth required, except in the province of Quebec, where a considerable quantity was still produced in the homes of the peasantry.

Soap and candles were almost universally of domestic manufacture throughout the country districts.

The iron smelter and foundry at St Maurice, near Three Rivers, still flourished, furnishing for a large range of territory excellent stoves, soap and sugar kettles and other iron ware. Another iron smelter and foundry was established at Marmora, in Hastings County, Upper Canada, about 1823. It produced excellent iron, but difficulties of transportation

and a limited market frustrated the attempts of successive promoters to put it on a paying basis.

The fishing industry maintained a fair standard, but gave evidence of little enterprise. Dried codfish, salted salmon and fish oil represented the chief lines of supply for foreign markets.

From about 1825 to the last decade of the nineteenth century the prices of provisions and the wages of labour remained remarkably uniform, apart from variations from season to season and the special prices for wheat and flour during the Crimean War and the American Civil War. About 1836 in Upper Canada wheat varied from 75c. to 90c. per bushel, while in export markets, such as Montreal, it ranged from $1.00 to $1.50, with other grains in proportion. Flour brought from $4.50 to $5.00 per barrel. In the towns and cities milk sold for 5c. per quart, butter at from 15c. to 20c. per pound, cheese from 10c. to 15c. per pound, bread from 10c. to 12c. per 4-lb. loaf, and beef and pork in quantities brought from 5c. to 8c. per pound. Wages were very low as compared with recent standards. Domestic servants received from $5.00 to $8.00 per month, and farm labourers from $8.00 to $12.00 per month with board, or $16.00 to $20.00 without board. The pay of skilled artisans ranged from $1.25 to $1.50 per day.

VIII

THE CRISIS BEFORE THE UNION

Transient Capitalism

UP to the time of the union of the provinces and the establishment of responsible government, most of the wealthier business men of the country and the owners of the capital which was most profitably employed did not regard Canada as their permanent home. Various causes may be assigned for their attitude. In Lower Canada, where many of these capitalists resided, the French atmosphere gave the impression of a foreign country, or at least of a

British colony not suitable for the permanent home of an English family. This attitude had long been familiar, of course, in the case of both the East and West Indies. In this connection it should be remembered that after the American Revolution the East and West Indies had furnished the chief fields for the employment of colonial capital. But these regions, both as to climatic and social conditions, were such that well-to-do British residents always looked forward to returning to Britain when they had amassed sufficient fortune to enable them to retire. Climatic and racial conditions in Canada were not so abnormal as in the Indies ; still, the customary British feeling towards colonial possessions remained and was fostered by French laws, customs and social usages in Lower Canada. Moreover, largely perhaps for political purposes, the French Canadians continued to regard their race as the only one having an original and natural right to the soil of the country. They constantly opposed British immigration on the basis of racial and political self-preservation. The loyalists and other American settlers from the adjoining states, and immigrants driven from Great Britain by poverty and lack of opportunity, alone regarded Canada, especially in the upper province, as the only possible home for themselves and their families. Many of the original settlers, it is true, invariably spoke of Britain as 'home.' Not so their families, however. Born and bred on this side the Atlantic, the sons and daughters of the English settlers constituted the first truly British Canadians ; but most of them were engaged in farming or minor trades in the earlier days, and a relatively small number in the larger commercial and investment interests of the province. Therefore they did not furnish, until much later, an acclimatizing atmosphere for the British capitalists. For these and other reasons Canada, until after the Union, was not the home of her own capitalists. To a large extent this accounts for the astonishing lack of civic pride manifested by the wealthier residents of the towns and cities, which called forth expression of critical surprise from both visiting and resident observers.

Upper Canada's Grievances

In 1837 a commercial crisis, accompanied by the suspension of the banks and followed by business stagnation, occurred in the Canadian provinces. Just before this critical period, apparently realizing its inevitable advent, the House of Assembly of Upper Canada, in an address to the king, set forth the economic repression which the colonies had undergone, and its natural consequences unless relief were afforded. It was pointed out that the troubles of the colonies were due chiefly to restrictive laws and regulations which limited British North American production, curtailed colonial trade with other countries, and strictly confined its transportation to British ships and specific routes.

> If the restrictions which embarrass our commerce were removed and we were permitted to direct the labour of our hands to the industry of our choice, to employ the cheapest and most convenient means of transport, and to carry the products of that industry to those markets in which they could be disposed of to the best advantage, our means of purchasing British goods would be thereby increased and our capital and labour employed beneficially in diffusing wealth and enjoyment throughout the country.

This statement is particularly interesting in view of the commercial changes which took place both in Britain and the colonies during the period (1841-67) from the Union of the two Canadian provinces to Confederation.

In the meantime Upper Canada—owing to its remoteness from the sea, from which it was completely shut off in winter—wished to be free to use any channel of communication both for export and import. This, of course, had reference chiefly to the Erie Canal and the recently developed railroads through the United States. The representatives of Upper Canada held that one of the chief reasons why immigrants coming to Canada passed on to the United States was that there they would have three outlets for their produce : first, by way of the St Lawrence ; second, by way of the Erie Canal ; and, third—for the new settlements of the Middle West—down the

Ohio and Mississippi Rivers to the southern states and the Gulf of Mexico.

Upper Canadians, therefore, began an agitation for reciprocity in bonding privileges, and asked the British government to secure for them access to the American markets. They desired the bonding privilege in order that their goods might be shipped through the United States to foreign markets. They particularly desired to secure reciprocity with the United States in lumber, grain, flour, fish and other natural products. They asked also for the free admission of Canadian grain, flour, meat and other staple provisions into British markets. They further advocated a freer admission into Canadian ports of such foreign goods as did not come into regular competition with the industries of the country. Tea, for instance, was taxed on entering Canada at Quebec, while it was free to enter the United States, though prohibited from entering Canada from the States. Yet, as a matter of fact, large quantities were constantly smuggled into the Canadas, and the usual demoralizing consequences of smuggling were fully recognized and dwelt upon. It was proposed that the following articles be placed upon the free list for importation to Canada : tea, coffee, molasses, cotton and all its manufactures, bur blocks for millstones, books and papers of all kinds, printing presses and printing supplies, tin and tin plate. They would even abolish the differential duties in favour of British goods, leaving only a small revenue duty on all imports, British or foreign, but especially on such goods as might be classed as luxuries, or which were subject to production within the colony itself, where a slight increase in price might be tolerated for a time while the industry was being established in the country. At the same time they desired that Britain should continue the preferential duties in favour of lumber in order to furnish a steady market for that product. Although no action was taken as the result of these representations, yet they furnish an interesting forecast of the agitation and discussion which followed the consummation of the union of the Canadian provinces.

From the Maritime Provinces also we find that the act to regulate the trade of the British possessions abroad came in

for considerable criticism along much the same lines as in Upper Canada. The assembly of Nova Scotia, while professing unabated loyalty and affection for His Majesty's person, at the same time complained of the restrictions of the British Trade and Navigation Laws. Foreign vessels and goods were permitted to enter only three ports in the province, Halifax, Pictou and Sydney ; while Liverpool and Yarmouth were merely warehousing ports, where goods might be stored for re-export but might not enter the province. There were, however, many ports from which produce might be shipped without corresponding imports being entered.

Economic Stagnation

None of the many suggestions for the future development of the colonies could be seriously considered while they were in such an unsettled political condition as that which prevailed from 1837 to 1840. Political deadlock, racial conflict and commercial depression combined to place the Canadian provinces in the most serious condition which they had yet faced. Provincial credit was at a low ebb ; the public works, undertaken chiefly for the improvement of transportation so essential to the upper province, were completely arrested before they had proved of any value ; private enterprises were abandoned ; employment for labour fell off ; immigration ceased or was entirely diverted to the neighbouring states to which there set in a rising tide of emigration, including for the first time a very considerable number of French Canadians, chiefly from the districts involved in the Rebellion. These emigrants continued to draw off many of their friends and acquaintances, and thus a permanent channel was established for the transfer of French Canadians to certain districts of the republic.

Fortunately, neither political strife nor commercial depression had any appreciable effect upon the salubrity of the Canadian climate or the fertility of the soil. So long as foreign markets were available for agricultural staples, such as wheat and flour, the basal economic support of the province remained unaffected by the social and political troubles. But, while the agricultural basis of the province remained

intact, its economic superstructure was severely shaken. The banks were forced to suspend specie payments, insolvency overtook the weaker brethren in commercial life, urban real estate was unsaleable, and stagnation reigned in every industry. Politically the period from 1837 to 1841 proved in the end to be one of vital interest as involving the final conflict over great issues, upon the settlement of which the political, and ultimately the economic and social, future of Canada depended. Yet economically there is scarcely a period in Canadian history which presents less movement and so little of permanent interest. The vitality of the staple agricultural industries saved the period from the interest which attaches to a severe economic crisis; yet even agriculture was far from being a profitable industry. It did, indeed, provide a living for those engaged in it, but it afforded little profit and excited no envy. Agricultural lands, though not quite so dormant as urban property, yet remained a drug in the market, while the stream of British immigration passed on the other side. The miscellaneous undeveloped natural resources of the country were, of course, as great as ever, but they had ceased for the time to generate any enthusiasm, as they gave little promise of passing beyond the undeveloped stage.

But while economic progress was so completely paralysed, there was remarkably little evidence of despair. Those who felt no interest in the all-absorbing political issues of the period quietly took their way across the American border, preferring the ills they knew not of to those they had. On the other hand, those who were caught by the vital and absorbing issues of responsible government or autocratic rule, of English or French political ascendancy, and of the union or non-union of the provinces, were apparently quite oblivious of the unprogressive or even retrograde economic condition of the country, or of what it might portend for the future. To them, for the time being, parties and politics were far more absorbing than industry and commerce. Politically 'the life was more than meat and the body than raiment.'

This, however, was only a temporary phase of Canadian national life. After the problems connected with the union

of the provinces had been disposed of, and responsible government accepted in principle, interest in the various economic questions of the province rapidly revived. The stream of British capital and immigration was once more turned towards Canada, and the country entered upon one of its most progressive stages.

CURRENCY AND BANKING

1760-1841

CURRENCY AND BANKING, 1760-1841

I

FINANCIAL SITUATION AFTER THE CONQUEST

DURING the military occupation of Canada between 1759 and 1763 purchases made by the commissariat department, the British troops and the English traders, were all valued and paid for on the basis of British currency. But market prices and exchange values were so completely demoralized by the flood of constantly depreciating paper money, that no formal transition was possible from French to British monetary standards. Canadian paper money had become an article of wild-cat speculation, its value varying with every rumour as to its possible redemption and the rates at which the various issues might be accepted.

As already related,[1] a very considerable quantity of French coinage had gone into hiding during the paper deluge of the old régime. Only gradually, however, did it reappear after the establishment of British rule. Such French coins as found their way into circulation did so chiefly through retail trade, and were accepted on a slightly overrated bullion basis.

When the business activities of Montreal and Quebec were revived by British merchants from the adjoining colonies, the currency standards of these colonies began to prevail in commercial transactions. The Quebec merchants were allied chiefly with the maritime colonies of Nova Scotia and Massachusetts, while the Montreal merchants and fur traders were more conveniently connected with the colony of New York by way of the Lake Champlain route.

Owing to the New England and other American colonies

[1] See section I, NEW FRANCE: 'The Colony in its Economic Relations.'

having been closely associated with the West Indian trade, the Spanish dollar, or piece of eight, as it was called (meaning 8 reals), had come to be the prevailing coinage in circulation, and through it, as bullion, exchanges were balanced with Britain. At the same time the nominal standard was the British shilling. Intrinsically the Spanish dollar was equivalent to 4s. 6d. sterling, but its valuations in the colonies followed neither the intrinsic standard nor any uniform rate. As in all new countries, actual money was somewhat scarce, and, in order to attract it and retain it in circulation, there was a constant tendency to over-value it. Before the close of the seventeenth century the piece of eight varied in colonial ratings from 4s. 6d. to 7s. In 1697 the legislature of Massachusetts rated the Spanish dollar at 6s., an advance of 1s. 3d. on its intrinsic value in British currency. Although the home government, through a proclamation of Queen Anne in 1704, sought to establish a uniform standard of colonial currency, it was found impossible to prevent various degrees of overrating in the different colonies. In Massachusetts and Nova Scotia the customary rating was 5s., while in New York colony it was 7s. 6d., and not long afterwards 8s. Both of these ratings were introduced by the merchants coming to Canada. The former was prevalent at Quebec, where it was known as Halifax currency, and the latter at Montreal, being known as York currency. As yet, however, no official rating had been appointed.

II

EXPERIMENTS IN MEDIUMS OF EXCHANGE

THE year after the establishment of civil government in Canada, Governor Murray passed an ordinance, published October 4, 1764, 'for regulating and establishing the currency of the province.' By this ordinance the chief gold and silver coins familiar to American colonial trade were separately rated on the basis of Queen Anne's proclamation. Of the silver coins the Spanish dollar was rated at 6s., the French crown at 6s. 8d., and the British shilling at 1s. 4d., the

Spanish pistareen was rated at 1s. 2d., and the French 9 penny piece at 1s. currency.

To meet the requirements as to fractional currency it had been customary, in default of small change, to cut up various coins, especially the dollar, into halves and quarters and pass the sections as change, but as this facilitated fraud, the ordinance of 1764 prohibited the circulation of cut money. Another and more successful device to meet the prevailing scarcity of fractional currency was the issue by the merchants of small due bills, good at their face value for merchandise. When the merchants issuing these due bills were well known and the bills were duly honoured when presented, they gradually gained a more or less general circulation and thus met a very urgent need, although in a very risky manner.

This informal paper currency originating in French Canada, and the notes being commonly introduced with the words '*Bon pour*,' these notes came to be universally designated *Bons*, the name following their introduction into Upper Canada at a later date. These *Bons* undoubtedly prepared the way for the subsequent issue of bank notes. Indeed, an enterprising auctioneer of Quebec, with the self-assurance of his profession, petitioned the council of Quebec in 1767 for a monopoly of the privilege of issuing promissory notes for small sums as a substitute for fractional currency. This would appear to be the first application for a bank charter in Canada.

The ratings given by Murray's ordinance to a number of the coins listed were not very consistent with each other. He had confessedly overrated the French coins in order to coax them out of their retreats, and at the same time retain them in the country. Some efforts were made to obtain a Canadian Rating Board, but differences of opinion between the Quebec and the Montreal merchants prevented any action from being taken until after the passing of the Quebec Act and the outbreak of the American Revolution. Then the ordinance of 1777 was passed, but as the Montreal merchants were more or less suspected of sympathizing with the revolutionists, Quebec influences prevailed, and Halifax currency became the standard currency of the colony. In

accordance with this standard, the Spanish dollar was rated at 5s., the British and French crowns at 5s. 6d. each, the British shilling at 1s. 1d., and the Spanish pistareen at 1s. In this scale of ratings, as compared with the standard dollar, the British crown was underrated to the extent of 4d., which was quite sufficient to drive it out of circulation; the French crown, on the other hand, was still over-valued, and tended to remain in circulation even to the exclusion of the dollar. Later it was a source of much trouble to the banks and wholesale merchants. The pistareen, however, was the most overrated of all, and was therefore attracted to the colony in considerable quantities. For a time this was advantageous as increasing the supply of fractional currency; later, however, it became an annoyance. The gold coins were also readjusted in value, but not much difficulty was found in circulation, the chief coins being the British guinea and the Portuguese Johannes, commonly known as 'Joe.' The former was rated at £1, 3s. 4d. and the latter at £1, 4s. During the latter part of the Revolutionary War so much specie was sent to Canada that in 1783 the Canadian merchants petitioned the British Treasury to send no more, as they could supply all that was wanted in exchange for Treasury bills

When exchange with the emancipated colonies, then the United States, was resumed, the merchants who were responsible for the international exchanges found the overrating of certain coins a source of considerable loss. They therefore petitioned the government for a further revision of the ratings, but no change was made until after the division of the province into Upper and Lower Canada. Then an act was passed in Lower Canada and copied in Upper Canada which made some changes, chiefly by permitting slightly worn gold coins to pass at full value, and thus encourage their remaining in circulation. The act also gave official standing to the new American coins, the eagle, rated at £2, 10s., and the dollar, rated at 5s.

Although the Boston or Halifax standard prevailed in point of law, yet in current practice the Montreal merchants still did a large business in York currency with 8s. to the dollar. In this they were followed and encouraged by the

loyalist settlements in Upper Canada, where the majority of the immigrants were from New York and New Jersey and the adjoining districts of Pennsylvania. So deeply rooted was the York currency in the rural districts and towns of Upper Canada, that down to the present generation the prices of agricultural produce were quoted among the farmers and local dealers in York shillings.

Although the York shilling was originally the Mexican real, yet in later times it found visible embodiment in the British sixpence, which in Canada was almost universally spoken of as a York shilling. The employment of York currency in tradesmen's books and in all forms of contracts gave rise in time to considerable difficulty in the courts. This was met in 1821 by an act of Upper Canada. By this, York currency was deprived of legal recognition in the courts and was thus confined to popular usage. Among the peasantry of Lower Canada the French livre was the popular money of account, holding much the same place there as York currency in Upper Canada.

When decimal currency in the United States became firmly established, the miscellaneous coinage previously in circulation there, much of it worn and defaced, began to take refuge in Canada, where the scarcity of coinage of any kind prevented its being too closely scrutinized. The silver currency thus tending to become demoralized, those having payments to make beyond the country began to rely more fully on the gold coins, and devoted their attention to an adjustment of their ratings. Thus the act of 1808 dealt only with the adjustment of values between gold coins.

During the whole of this period the imperial government took little interest in the local currency standards and ratings in its military and colonial establishments in the provinces of British North America. The imperial government required its accounts to be kept and its payments made on the sterling standard of the mother country; at the same time the specie employed in payments to the troops and for miscellaneous supplies was not as a rule British coinage, but Spanish dollars, rated at 4s. 6d. each. To this rating, of course, the colonial prices were nicely adjusted, but as the payment to

the troops was on a fixed basis, the soldier received a premium of 6d. currency on the dollar, which passed in trade for 5s. In 1808 this premium was reduced, notice being given by the imperial authorities that thereafter the Spanish dollar would be issued to the army at the rating of 4s. 8d. sterling.

III

FIRST ATTEMPTS TO ESTABLISH BANKS

THE first attempt to establish a regular banking institution in Canada was made in 1792. Primarily interested in the undertaking was an important English firm of merchants doing business with Canada, Messrs Phyn, Ellice and Inglis. With these merchants were associated the members of two leading commercial firms in Montreal—Todd, McGill and Co., and Forsythe, Richardson and Co.—who were doing business with this English house. The prospectus of the new bank, to be known as The Canada Banking Company, was drawn up in London, and dated there March 17, 1792. These firms declared that they had met with much inconvenience in their Canadian trade from the lack of sufficient and uniform circulating medium, and their experience had induced them to establish the proposed bank at Montreal. After referring to the recognized utility of safely conducted banking institutions, they declared their intention to establish the new bank on the most approved lines. The chief functions of the bank would be to receive cash deposits, to issue notes, to discount bills of exchange and promissory notes, and to facilitate business by keeping cash accounts for those who wished to make use of the bank in their receipts and payments. It was also proposed to establish agencies, or branches, in the different centres of the two Canadian provinces, particularly in Upper Canada, where these firms had already developed a profitable connection with the loyalist settlements.

This proposed banking company, it may be observed, professed sound principles and covered all the essential features of banking. On studying Canadian conditions more

closely from a banking point of view, the promoters apparently concluded that the trade of the colony was not sufficiently developed to support the proposed bank and allowed their scheme to drop. There was little occasion for banking services throughout the rural districts of Lower Canada, while in Upper Canada the leading merchants in the rising towns performed practically all the functions of a bank except the issue of notes, though some of them provided an irregular issue of *Bons*.

In Western Canada particularly the larger merchants were both exporters and importers of practically every variety of goods required in the settlements. Nearly all exchanges were made through them; credits were extended by them and orders for goods and money drawn upon them. They also conducted the external exchanges, procuring from their Montreal agents such foreign bills as might be required. The larger importers in Montreal discharged all the ordinary functions of a banker for their regular customers, the merchants of the upper province. They received deposits of money and bills, made payments to order, and advanced loans or credits, to be met later by produce, bills, or cash.

It is true that the combination of functions performed by the local merchants gave them a very considerable power over the people of the districts tributary to their establishments. Governor Simcoe, of Upper Canada, perceiving this, proposed an elaborate scheme of grain and flour stores, the forerunners of the modern elevators. This was combined with the plan for a system of paper money, to be issued when the grain or flour was deposited, the whole to be managed by the governor, assisted by members of the executive and legislative councils. Fortunately the Lords of Trade in Britain, while often mistaken with reference to Canadian needs, recognized the impossible nature of Simcoe's scheme and frustrated his plans.

There were gradually developed intimate trade relations with the United States, especially after Jay's Treaty of 1794. Much American produce from the West found its way to market through Canada, while the British government purchased large quantities of supplies for the local garrisons.

As a consequence, while much Canadian money was drained off to the neighbouring states, the supply of bills on Britain was often larger than the demand in Canada, while in the United States they were at a premium. This led to a profitable and fairly extensive business in foreign exchange between Canada and the United States, more particularly between Montreal and New York; and, in turn, to the introduction of a good deal of American currency.

The development of both domestic and foreign exchange in Canada, and the encouraging success of the Bank of the United States, established by Alexander Hamilton, led to the revival, in 1807, of the idea of a Canadian bank, with an office, or agency, in both Quebec and Montreal to begin with. Petitions from these cities were sent to the provincial legislature of Lower Canada in 1808, praying for the incorporation of a bank, to be known as the Bank of Canada. This bill was introduced and printed, but did not get through the second reading. This attempt and its failure in the legislature suggested to a number of merchants and others in Kingston, the leading commercial centre of Upper Canada, that a bank with a provincial charter might be established in Upper Canada. This project, however, did not take definite shape until 1811, when the United States Congress destroyed the Bank of the United States on discovering that most of its shares were owned in Britain. This discouraging event, and the rapidly increasing friction with the United States, prevented the Upper Canadian proposal for the establishment of a bank from going any further.

IV

THE WAR OF 1812 AND FINANCE

JUST before the War of 1812 the uncertainty of the British market for grain and flour, owing to the operation of the British Corn Law with its sliding scale of duties, had resulted in low prices for Canadian produce and long credits, with a consequent monetary stringency, which was becoming very embarrassing. The outbreak of the War of 1812 soon led to

large expenditures in Canada by the British government. These expenditures would normally be met by the local issue and sale of bills of exchange on the British Treasury, but, there being little specie in Canada with which to purchase them, and the importation of large quantities of specie during the period of war being very risky, the imperial government arranged for the issue of army bills, which were simply orders on the British Treasury expressed in convenient standard amounts. They bore interest and were convertible into bills of exchange on Britain. Certain small denominations bore no interest and were payable in specie on demand at the army bill office. These bills were not paper currency in the ordinary sense of the term, but simply a means of facilitating the transmission of British capital to Canada. At first the French Canadians, recalling the experiences of their fathers with the previous issue of army bills just before the Conquest, were very suspicious of this new experiment and lost no time in converting them into specie, but once the people became familiar with their operation, they performed their functions efficiently enough.

Soon the chronic complaint as to the lack of currency for circulation was heard no more in Canada. Money was plentiful and prosperity diffused its benign influence throughout the land. Except for a few early skirmishes, chiefly on the Niagara frontier, the Canadians saw little of the war; in fact, as in the case of the American Revolution, war presented itself to the Canadians not in its usual garb of rapine and destruction, but as a beneficent spirit, industriously employed in transferring large sums from the pockets of the British taxpayers to those of the needy colonials. Nor indeed from that time to the present has the demon of war ever presented himself to Canadians as other than the purveyor of larger markets and higher prices. Little wonder then that it was jestingly said that the liturgy of Canada contained a fervent prayer seldom heard beyond these favoured shores, the prayer for a bountiful harvest and a bloody war.

As already indicated, the army bills, though incidentally serving as a medium of exchange, were very different from paper currency. They were simply bills of exchange serving

to pay for imports from abroad or to bring specie to the country, either directly from Britain or from the sale of the bills in American cities. Nevertheless they familiarized the Canadians with what appeared to them merely a safe paper currency, and the way was thus prepared for the successful launching of several banks after the close of the war.

The movement for the incorporation of a bank by provincial charter was begun in 1815 and continued in 1816. The conviction appeared to be general, even among business men, that in some way a provincial bank, by the issue of a paper currency, would be able to supply a medium of exchange to take the place of the army bills, and thus support the prosperity of the country even in times of peace. In 1816 and again in 1817 bills were introduced in the legislature of Lower Canada authorizing the establishment of a bank. There appears to have been no serious opposition to these bills, but on both occasions constitutional difficulties with the administration led to the unexpected prorogation of the legislature before the bank bills were reported.

V

ORIGIN OF THE GREAT CHARTERED BANKS

THE attempt to secure legislative charter for the proposed bank having failed, the Montreal merchants and others who were chiefly interested in the movement decided to establish the bank as a private corporation. Accordingly, on May 19, 1817, the Articles of Association of the Bank of Montreal were adopted, and ten days later they were published in the Montreal *Herald* and also in separate form. A large proportion of the capital subscribed was contributed by Americans. An officer of the bank was sent to New York to study the working organization of the Bank of the United States, which had been re-established in 1816. One of the original staff of the bank was an American, experienced in American banking practice. From the United States also came the first notes, whose denominations were expressed in dollars. Although the bank was opened in August to receive

instalments on the subscribed capital, it did not begin the regular business of banking before November 1817.

As the principles embodied in the Articles of Association of the Bank of Montreal were copied by all the early Canadian banks and formed the basis of the first bank charters granted by the legislatures of Lower and Upper Canada, and as these principles have remained in law and practice the central features of the Canadian banking system down to the present day, it is of special interest to trace the genesis of the Articles of Association of the Bank of Montreal.

In many of its most characteristic features, such as the system of branch banking and the elasticity of the note issue, which together enable the Canadian banks to meet the varying needs of the country, and in all its sections the Canadian system presents a striking contrast to the present banking law and practice of the United States. Yet in the essential features referred to, the Canadian system is simply a copy of the charter of the first Bank of the United States, which was devised by Alexander Hamilton, the first secretary of the Treasury under the new constitution of the United States adopted in 1789.

Hamilton had received an excellent training in practical finance and gave evidence of a remarkable capacity to adjust the sound financial principles of banking to the particular needs of a new country. He desired to found an institution which would serve the United States as efficiently as the Bank of England served the British government. The conditions of the two countries, however, were very different, and these differences must be respected.

After the adoption of the present constitution of the United States, Hamilton drew up and presented to Congress an able and comprehensive report on the establishment of the public credit. The latter part of this report contained a plan for the establishment of a national bank. On the basis of this plan, he framed a bill for the incorporation of the Bank of the United States. After a full discussion, the bill passed Congress and became law March 2, 1791. The bank was chartered for twenty years, and on going into operation soon achieved a remarkable success. Whether or not much of the

original stock was taken by British investors, at any rate during the second decade of its existence the majority of the shares were held in Britain.

This bank having proved so highly successful, it was only natural that the chief features of its charter should be followed in the charters of other banks subsequently established. Evidently the successful founding of the Bank of the United States lent encouragement to the scheme of the London and Canadian merchants, who proposed the establishment of the Canadian Banking Company in 1792. We find also that the bill already referred to for the establishment of a bank in the Province of Lower Canada in 1808 was simply an adaptation of the charter of the Bank of the United States, following very closely, even to their wording, the clauses and conditions of the American act. This bill, as we have seen, did not succeed in passing the legislature. It was reproduced, however, in much the same form in the bills of 1816 and 1817.

When we examine the Articles of Association of the Bank of Montreal we find that, allowing for the dropping of certain features, such as authorizing the government to take shares in the bank (a feature afterwards revived in the first charter granted in Upper Canada), and the slight changes necessary to convert the institution from a public corporation to a private association, these articles simply reproduced once more, and in much the same wording, the essential features of Alexander Hamilton's plan for the Bank of the United States. This then is the pedigree of the Bank of Montreal, the earliest and most important of the Canadian banks, and one whose history is inseparably connected with the most important features in the financial history of Canada.

The following year, 1818, three other private banks were established in Canada, namely: the Quebec Bank at Quebec; the Bank of Canada at Montreal; and the Bank of Upper Canada at Kingston. Each of these in turn copied, with only a few verbal changes, the Articles of Association of the Bank of Montreal.

In outline the leading features of the Articles of Association of the Bank of Montreal and, consequently, of these other banks were as follows: The conditions under which the

bank was to be organized and to come into operation are simply an epitome of the corresponding conditions in the present Bank Act. The authorized capital of the bank was £250,000 currency, or $1,000,000. The shareholders were liable only to the extent of their subscribed shares, the double liability clause being introduced much later. The bank was not to deal in real estate or lend money on mortgages, although mortgages might be taken as collateral security. In addition to the usual business of receiving deposits and discounting notes, the bank might deal only in bills of exchange and gold and silver bullion. The total liabilities of the bank must not exceed three times its paid up capital. The directors were required to present to the shareholders at the annual meeting the return of the liabilities and assets of the bank, specifying in particular the notes in circulation, bad or doubtful debts, and the surplus or profit over and above losses. The bank might establish branches in other parts of Upper and Lower Canada. The first officers of the bank were: President—John Gray; Cashier—Robert Griffin; Accountant—H. Dupuy; Teller—Mr Stone. The position of cashier corresponded to that of general manager of later times.

Thanks to their experiences with the army bills, a number of the wealthier French Canadians were induced to take stock in the new bank and to entrust to it their deposits. Yet the majority of the country people would neither entrust the bank with their funds nor hold its notes longer than the time required to exchange them for the necessary supplies of goods or to return the surplus to the bank for redemption. In this connection, though impeding the development of the banks, they performed a real service to the Lower Canadian banks by preventing them from getting into trouble through the possible over-issue of notes. The Upper Canadian banks, on the other hand, were not so fortunate. They received nothing but encouragement, and therefore suffered very severely in times of crisis.

Although the Bank of Montreal came into operation as a private company, it did not give up the attempt to secure a regular provincial charter. A bill to charter the bank was introduced in 1818 and successfully passed the legislature,

but it was reserved for the signification of the king's pleasure and nothing further was heard of it. In the meantime the Bank of Montreal having proved its capacity to live and thrive, the leading merchants of Quebec undertook to establish a similar institution in that city with a capital stock of £150,000 currency, or $600,000. They successfully carried through their undertaking, establishing the Quebec Bank notwithstanding that the Bank of Montreal was preparing to establish a branch in Quebec, a thing that was soon afterwards accomplished. J. W. Woolsey was the first president of the Quebec Bank and Noah Freer its first cashier.

The third private banking institution, named the Bank of Canada, was established in Montreal in 1818. Its chief promoters were a group of more or less speculative Americans, attracted to Montreal chiefly by the profits of the exchange business during the war period. It had but a limited list of shareholders and depended upon a special line of business, and when that fell off in the early twenties the directors found it necessary to wind up its business. Its assets were taken over by the Bank of Montreal, with considerable sacrifice to the shareholders but without loss to the customers of the bank.

In 1821 bills to incorporate the three Lower Canadian banks were passed by the legislature, and although reserved as before, they managed to obtain the royal assent in 1822. Thus the Bank of Montreal, the Quebec Bank and the Bank of Canada became regularly chartered institutions.

The example of the Bank of Montreal beginning its career as a private institution gave encouragement to the promoters of similar institutions not only in Quebec and Montreal but in Kingston, the chief commercial centre of Upper Canada, and closely allied with Montreal in all matters of business and exchange. As already observed, the Kingston merchants had attempted to establish a provincial bank in 1810 but without success. Early in 1817 they resumed their efforts and sought to obtain a provincial bank charter for the Bank of Upper Canada. A bill for this purpose was duly introduced in the legislature, duly passed both houses, and was reserved for the consideration of the king, that is to say, the home govern-

ment. After two years of deliberation, during which the time for taking action under the act had expired, the royal assent was graciously transmitted. A new bill had thus to be introduced.

In the meantime a number of the more impatient of the promoters of the new bank determined to follow the example of the Bank of Montreal and establish the Bank of Upper Canada, for the time being, as a private corporation. Accordingly, in 1818, the Bank of Upper Canada was duly established under Articles of Association reproduced almost exactly from those of the Bank of Montreal. The capital stock of the new bank was fixed at £125,000 currency, or $500,000. Meanwhile a number of other Kingston merchants who had taken part in securing the passage of the act to incorporate the provincial Bank of Upper Canada, but who were not in favour of establishing it as a private bank, allied themselves with the bank of Montreal and induced it to establish a branch at Kingston. This was done in July 1818. In October of the same year the Bank of Canada, in Montreal, established a branch at Kingston. Thus a town barely large enough to support one bank was almost immediately called upon to support three—two branch banks and a head office.

In April 1819 the private Bank of Upper Canada opened its doors for business and soon enjoyed a liberal circulation for its notes. In fact, following the army bill experience, the British people in Canada were much too ready to accept the notes of the new banks. At the same time the Canadian provinces, and especially Upper Canada, were being flooded with American bank notes.

In the meantime the Kingston merchants took steps to secure the renewal of the charter which had lapsed by reason of the leisurely methods of British red tape, but the merchants and government officials of York, afterwards Toronto, the seat of government, had awakened to the desirability of having a bank of their own. Knowing that the royal assent had been promised for an institution under the title of the Bank of Upper Canada, when that measure was passing through the legislative council, in which the York influence was very

strong, they had the names of the Kingston merchants struck out and a York list substituted ; the head office of the bank was also changed from Kingston to ' the seat of government.' Thus, should the government be removed from York, the leading officials would be able to take their bank with them. This act duly passed the legislature in 1819, but owing to the changes introduced, it was again reserved by the governor. Again the delay in dealing with the bill almost covered the two years of grace provided in the bill. However, the royal assent was announced in April 1821. Thus was established that financial and political storm centre, the Second or Chartered Bank of Upper Canada, regarded as one of the chief assets of the famous Family Compact.

By the time of the early twenties the prosperity of the colony was rapidly ebbing away under the influence of the readjustment following an exceptionally long and exhausting war. The great strength of the Bank of Montreal lay in the fact that, being the first and strongest bank in the field, it obtained the great majority of the government bills of exchange, which it resold at a handsome profit on a rising market. The other banks suffered more severely from the reaction, especially the Bank of Canada at Montreal and the Bank of Upper Canada at Kingston. The former, as we have seen, voluntarily went out of business. The latter was for a short time in a very flourishing condition. It could not issue notes enough to meet the current demand. Yet what the people wanted, however little they might understand the situation, was capital, not a circulating medium with nothing to circulate. The natural conclusion of the whole matter was soon reached. The bank could issue its own notes rapidly enough, but it could not collect on its customers' notes when they fell due. The demand for specie to meet American exchanges soon exposed the emptiness of the bank's coffers, and it was shortly afterwards forced to close its doors, which never opened again.

The normal liquidation of the institution was interfered with by the appointment of a government commission to inquire into the management of the institution. The commission taking a large view of its powers, the delay occasioned

interfered with the collection of the debts due to the bank. On the other hand, the directors declined to be held responsible for the losses incurred, and virtually unloaded the task of liquidation on the government commission. On the other hand, the debtors made the proceedings an excuse to escape the payment of their debts. Needless to say, no ultimate settlement of the affairs of the bank was ever reached. The money collected was not even sufficient to keep the commission itself going, hence it transferred its dependence to the public treasury and took a new lease of life. In the course of years the institution gradually vanished into an ever-expanding fog of legal arguments, commissioners' reports, questionable claims and uncollectable debts, all very carefully figured out at compound interest.

Meanwhile the new Bank of Upper Canada established at York was having its own troubles in getting started. Its chief promoters, the government officials, though born to rule, as became members of the Family Compact, were as yet relatively impecunious. They lost, however, no opportunity to remedy this defect, and in this most of them ultimately succeeded. By its charter the government was authorized to take shares in the bank, and of course this authority was utilized to the utmost limit and even beyond it. Even after an amendment to the act had reduced by one-half the amount required to be paid in before the bank started operations, it was with the greatest difficulty that the institution was able to begin business in July 1822. Of the fifteen directors composing the first board, nine were either members of the legislative or executive councils or held important government positions, and most of the other six were found in similar positions a few years later.

The three Canadian banks at Quebec, Montreal and York having been definitely established and having come to realize the necessity for caution in the discounting of notes and the issue of a paper currency, which latter was more closely connected at that time than afterwards with the discount business, the annals of Canadian banking were for a short time happily devoid of special interest.

VI

THE BRITISH GOVERNMENT AND CURRENCY REFORM

SHORTLY after 1822 an important experiment was attempted in the line of currency reform. The British government, owing to the difficulties experienced during the period of suspended specie payments at the time of the Napoleonic wars, decided to place the British currency on a uniform basis. This was accomplished in 1816, when gold was adopted as a single monetary standard. Silver coinage was made a token currency by raising its face value somewhat above its bullion value and limiting its legal tender to 40s. Thus silver, which had fluctuated in exchange value, was retained as a permanent fractional currency without danger of the embarrassing tendency to leave the country under one set of exchange conditions or to flood it with miscellaneous foreign coinage under another. Finding that the new currency conditions were operating successfully, after making due preparations, the Bank of England resumed specie payment in 1821.

Having succeeded so well at home, and having extensive payments to make in the various outlying portions of the empire, the British government resolved to introduce the British system into all parts of the empire, beginning with the more important colonies. The Lords of the Treasury set forth their plan in a Treasury minute in 1825. The special conclusion regarding Canada, which emerged from the discussion on the points dealt with in the minute, was that the sterling standard should become universal and that the British silver and copper coinage should be employed in Canada for all moderate payments, while larger payments should be made by means of bills of exchange to be issued at a fixed rate of 3 per cent premium. In other words, £100 sterling payable in Britain would be exchanged for £103 sterling payable in the colony. It was naturally expected that the British silver and copper coins would remain in the colony and furnish a permanent medium of exchange. As they did not expect,

however, to dispense with the silver dollar at once, it was to be rated henceforth at 4s. 4d., with other silver coins in like proportion.

On paper the scheme appeared to be reasonable enough, and certainly seemed to present one practical link for the union of the Empire. In practice, however, it encountered many difficulties, some of which should have been foreseen by currency experts even in London, while others were admittedly of a character to be revealed only in actual experience.

An order-in-council was sent to the British North American colonies, among others, virtually making British silver an unlimited legal tender and British copper coins legal tender to 12d. Moreover, 4s. 4d. of British silver would be the legal equivalent of one Spanish dollar, and in like proportion to any amount. James Stephen (afterwards Sir James), the distinguished under-secretary for the colonies, but at this time legal adviser to the colonial office, gave it as his opinion that His Majesty had no power by order-in-council to change the rating of coins fixed by the legislatures of the colonies. His opinion, however, was overruled by those of the attorney- and solicitor-general. But when Lord Dalhousie attempted to carry out his instructions he was met with the declaration that the proposed proclamation would be an infringement of the Canadian Currency Act. The only remedy would be to have the act amended; but the legislature of Lower Canada simply shelved the whole matter when it was referred to it. A very proper objection was made to the proposal by members of the legislative council on the ground that, if too much British silver should accumulate in Canada, it might be necessary to return it to Britain to liquidate the exchanges, and that there it would not be accepted as legal tender in larger amounts than 40s.

In Upper Canada the people of the legislature were eager enough to receive British silver and copper currency, being constantly in need of currency of any kind, but they declined to adopt the British monetary standard, for, though the official standard was the pound currency, people had become accustomed to doing business in dollars and cents, in which denominations the bank notes were printed in both provinces.

The Upper Canadian legislature, in response to the message of the lieutenant-governor with the accompanying documents of the Treasury, simply raised the rating of the British silver and copper coins. The crown was now rated at 5s. 9d. instead of 5s. 6d.; the shilling at 1s. 2d. instead of 1s. 1d.; and 10d. in British copper was made the equivalent of 1s. currency.

Frustrated in the attempt to alter the legal basis of the Canadian currency, the British government fell back from its large command of the colonial finances, and, as its payments in the colony were very large, its control of the exchanges was unquestioned. The Treasury sent out £30,000 sterling in silver and a considerable sum in copper coin. Instructions were received by the imperial officials in Canada that henceforth contracts for supplies, etc., for the imperial officers were to be stated in sterling; payments for these and to the troops would be made on the same basis, and where the dollar was employed it was to be rated at 4s. 4d.; payment for large sums might be made either in specie on this basis or in bills of exchange on London at £100 on the treasury for £103 of the contract. Owing to the constant demand for British bills of exchange and the declaration of the government that bills of exchange would be issued for British silver at 3 per cent premium, the British silver was constantly withdrawn from circulation to purchase the bills of exchange. Thus the very machinery which was to ensure the circulation in Canada of British coinage resulted in virtually banishing it from circulation, leaving the currency field to the paper issues of the Canadian and American banks, supplemented by French silver in Lower Canada and American and Spanish silver in Upper Canada. In course of time it was found that the premium of 3 per cent on British bills was too high, it being cheaper to export the British silver directly. Before long, therefore, the military chest itself was forced to receive and pay little else than Spanish and American dollars and their fractions. In consequence, the Treasury reduced the premium on exchange from 3 per cent to 1½ per cent, and bills of exchange once more resumed their place as the standard means of making payments in Britain.

Certain peculiarities and anomalies of the Canadian

monetary situation were revealed by the failure of the British experiment to establish the sterling standard in Canada. On the one hand, by adopting a purely conventional currency standard, the Halifax pound, with no coinage corresponding to it, it was necessary to utilize as a medium of exchange such foreign coins as proved to be available in the course of ordinary provincial trade. Thus, for historical and other reasons, it was found necessary to rate and admit to unlimited legal tender a variety of coins, over the issue and consequent supply of which the Canadian legislatures had no control. To place all these coins on an intrinsic par with each other would involve, as pointed out by the officials of the British Treasury, their rating in the nominal Halifax currency at various awkward fractions most inconvenient for rapid calculation. Moreover, these exact ratings would apply only to coins of full weight and unaffected by rates of exchange. As a matter of experience, however, British and American coins in particular fluctuated in value with the rate of exchange on their respective countries. Again, except for the gold coins, the official rating applied to them was by tale, not by weight. This, in turn, rendered it profitable to import and retain in circulation all manner of worn and defaced coinage from every country with which Canada had commercial dealings. Never was Gresham's law of the survival of the unfittest in coinage more completely and variously illustrated than in the history of Canadian coinage.

The most common of the smaller coins in circulation, and the most badly worn and defaced, was the Spanish pistareen, discarded by the Americans when they adopted their national currency. It passed current in Canada for 1s., or 20 cents, whereas in the adjoining states it did not pass for more than 17 or 18 cents. In 1830 it was reduced to 10d. in Lower Canada and excluded from the list of legal tender in Upper Canada. For lack of small change, however, this did not seem to materially affect its circulation.

During the second quarter of the nineteenth century the office of a Canadian currency broker was a veritable curiosity shop, exhibiting the remnants of several national currencies in the last stages of demoralization. There, from a currency

point of view, the halt, the blind and the disowned of many mints forgathered in shabby company. Their thin, worn and battered faces mutely witnessed to a long and busy life with much travel and hard usage. Only the chronic scarcity of coinage in times of peace enabled this motley crew to occupy the market-place and brazen their way into fairly respectable company.

The copper currency was worst of all, being composed of discarded British halfpence and farthings, all manner of tokens, native and foreign, and even brass buttons hammered smooth. Even then the supply was deficient, being entirely left to chance. At last private merchants, for the convenience of their trade, began to import supplies for themselves. Most of these passed into general circulation.

Other but less strenuous attempts were made from time to time to induce the colonies to adopt the sterling standard, but without success. The trend of mercantile and banking usage and of popular sentiment was in favour of the decimal currency of dollars and cents. During the period from 1825 to 1835 the air was filled with proposals for improving the currency, and especially for increasing its volume, but none of the proposed measures could command the assent of both branches of the legislature either in Lower or Upper Canada. Thus matters drifted through the thirties until the political troubles after 1836 paralysed all important legislation.

VII

PAPER CURRENCY

IN the meantime the Canadian banks were making very considerable progress. Indeed it was to the banks that the country was indebted for a fairly respectable medium of exchange in the shape of a paper currency, which, on the whole, served its purpose very well and greatly mitigated the evils which must otherwise have resulted from the unsatisfactory condition of the metallic currency in circulation.

Fortunately for the Second or Chartered Bank of Upper Canada at York, it had not fully started on its business career

before the crisis of the early twenties was well over. It therefore sailed on to prosperity with the revival of trade. Although the greater part of the expenditure of the British government in Canada still centred at Montreal, and the exchanges were handled by the Bank of Montreal, which from the first enjoyed the lion's share of government business, yet an increasing amount of financial work was passing to Upper Canada. Needless to say, all that pertained to the functions of the provincial government was carefully monopolized by the Bank of Upper Canada, the bank and the executive government being in the same hands. Undoubtedly, the knowledge that the government was behind the bank greatly improved its credit in the province and led to its note circulation enjoying a wide range, not only in Upper Canada but in the lower province and in the adjoining states as well.

In virtue of the wretched condition of the metallic coinage, the notes of the bank were so urgently required as a circulating medium that but a small fraction returned for redemption in coin. In consequence, the notes were often worn to shreds before being presented for redemption, and a very considerable number never returned. The very defects of the metallic currency which fostered the circulation of the smaller bank notes prevented the merchants from employing them to withdraw specie from the banks. As an additional precaution, the banks usually offered the poorest and most worn legal tender on the list. To export this as bullion would be a most unprofitable venture, hence it was seldom called for. Under the conditions of the period, therefore, the international exchanges and the currency needs of the country were supplied on lines quite independent of each other. Nominally the bank notes were redeemable at par on demand ; practically they were redeemable on demand at a heavy discount.

Several interesting schemes for the financial relief of Canada, all depending upon some banking project, were proposed between 1824 and 1830. One of the most interesting was broached by John Galt, of Canada Company fame, the father of a subsequent Canadian finance minister. All these projects turned upon the establishment of a paper or token currency, with more or less reasonable facilities for its redemp-

tion, although the chief value of each scheme depended upon the paper not being redeemed. In fact, each of these schemes involved the supply of capital for the development of Canadian resources, and simply disguised, more or less successfully, the essential difference between a medium of exchange and actual capital. In Galt's scheme and in those of others there was an attempt to enlist the credit and name of the Bank of England as a foundation for the paper currency of Canada. It was evidently assumed that the reputation of the Bank of England would in some way prevent the holders of the paper currency from returning it for redemption, and thus enable it to achieve the beneficent purpose of developing the resources of the country. The authorities of the Bank of England, however, knew that what they would be called upon to supply would be actual capital, concerning the security for which they were naturally somewhat in doubt.

During the thirties the Canadian banks came in for considerable criticism, mainly on the ground of alleged favouritism and the tendency of the banks to shrink from extending credits in times of financial stringency. The chief criticisms were naturally directed against the Bank of Montreal as the most prominent and influential figure in Canadian banking. Forgetting the cost and risk of transmitting funds from one part of the country to another, the merchants interested in wholesale trade were inclined to demand that the banks should cash cheques and exchanges and redeem notes free of charge in any part of the country where they had branches or agencies. Under the conditions of the period, this simply meant that the banks should undertake to discharge exchange functions between distant parts of the country at their own expense. At a later period, as we shall see, the demand that bank notes should circulate at par in any part of the country became a quite reasonable one, because, in the first place, the banking facilities were greatly enlarged, and in the second place, bank notes were chiefly used for local currency, and the functions formerly performed by these notes were later performed by cheques and bank drafts, for the cashing of which the banks still make a charge in the majority of cases.

At this time the Bank of Montreal was specifically criticized because it charged a commission for cashing notes at its agency in Quebec which had been issued and declared redeemable only in Montreal. The Quebec Bank would not receive at par the notes of the Bank of Montreal made payable in Montreal. Another grievance against the Bank of Montreal was that in buying up government bills in large quantities and selling them in New York, the bank enhanced the price of bills for the Canadian merchants. They conveniently ignored the fact that, in consequence of its New York connection, the bank was able to sell bills to the merchants at lower rates during those seasons of the year when government bills were not available. These and numerous other criticisms were brought forward in 1830, when the Bank of Montreal had occasion to ask for the renewal of its charter. On the whole the bank was supported by the chief merchants, and, the people at large being in a prosperous condition, there was no serious opposition in the legislature to the renewal of the bank's charter. In renewing the charter, however, the bank was required to make a more complete statement as to its financial condition. This extended report was based upon an act of the State of Massachusetts, and required, among other things, that the bank should specify the amount of capital paid in ; the notes in circulation ; the net profits on hand ; the balances due to other banks ; deposits, distinguishing those bearing interest. On the side of the assets the report should specify the bills on hand in the vaults of the bank ; the real estate owned ; the notes of other banks on hand ; balances due from other banks ; debts owing to the bank, distinguishing those owing on bills of exchange ; discounted notes ; mortgages and other securities. Many of these items, it will be perceived, are quite familiar features in the monthly returns required by the present Bank Act. The charter of the bank was renewed to June 1837. The Quebec Bank charter was also renewed, but only for five years, to 1836. Both were permitted to extend their capital.

VIII

A PLETHORA OF BANKS

THE prosperous condition of the country from 1828 to 1832 led to the projecting of new banks. The first of these was the proposed City Bank of Montreal, which applied for incorporation in 1831 but was blocked by the legislative council. During the following session its charter was passed by both houses but was reserved by the governor. Certain amendments were suggested by the home government, which, being accepted, the bill passed and received the royal assent. The City Bank began business late in 1832, with an authorized capital stock of £200,000 currency.

In 1833 the British government had apparently come to the conclusion that it was impossible to dominate the system of Canadian currency. For some time before this the commissary-general in Canada had disposed of the bills drawn on the home government, chiefly to the Bank of Montreal. From January 1, 1833, this official began to pay bills in Canada by means of cheques on the Bank of Montreal, which, in this way, was enabled to pay for the exchanges sold to it.

In Upper Canada conditions were even more prosperous and enterprising than in the lower province. The Bank of Upper Canada had become a very flourishing institution and was rapidly disposing of its remaining capital stock. In 1829 the Bank of Montreal, which had previously withdrawn its branch from Kingston during the commercial depression, re-established the branch there in order to take advantage of the expenditure of British capital in the construction of the Rideau Canal. This led to a bank war between the Montreal institution and the Bank of Upper Canada. Each one sought to embarrass the other by collecting large quantities of the other's notes and suddenly presenting them for payment when this operation was least convenient to its opponent. Such warfare, however interesting to the spectator, was soon recognized as anything but profitable for the parties chiefly concerned. Peace was accordingly

restored, and the Bank of Montreal was found soon afterwards acting as agent in Montreal for the Bank of Upper Canada.

In 1829 a project took shape for the establishment of a new bank in Kingston, to be named the Midland District Bank. The bill to incorporate it easily passed the assembly but was defeated in the legislative council, which was mainly composed, as we have seen, of the directors of the Bank of Upper Canada. The latter bank then undertook to establish a branch in Kingston, and by flattering advances withdrew some of the supporters of the new Kingston bank. But the movement failed of its purpose. The backers of the new bank, renamed the Commercial Bank of Upper Canada, once more brought their bill before the legislature and once more it passed the assembly, but, after a sharp debate, was lost in the council.

Meantime returns were being published showing a large increase in the business done by the Bank of Upper Canada, seeming to indicate that one bank could not adequately meet the growing needs of the province. During the session of 1831 the Bank of Upper Canada, having disposed of all its stock, desired an amendment to its charter authorizing an increase in the capital. At the same time another bill to establish the Commercial Bank was once more before the legislature. The majority of the council now recognized that the goodwill of the assembly was essential to getting their own bill through that house. They therefore agreed not to oppose the Kingston bank bill, which accordingly passed the legislature. The name finally decided on for the new institution was the Commercial Bank of the Midland District, commonly known, however, as the Commercial Bank. Its charter extended to 1856, and was practically identical with that of the Bank of Upper Canada. The capital stock was fixed at £100,000, and it obtained the right to establish branches in any part of the province. The information to be given in its returns was somewhat increased beyond the requirements in the charter of the Bank of Upper Canada. The new institution started off vigorously, and was destined before long to become one of the leading banks of the country.

As an indication of the great relative importance of the note issue of the banks at this period, it may be stated that, while the discounts of the Bank of Upper Canada in 1831 amounted to £260,577, the deposits amounted to only £33,621, while the note issue had reached £187,039, the capital stock paid in being £100,000. Instead, therefore, of the discounts being virtually provided by the deposits, as under our present banking conditions, they were supplied at that time by the capital stock and the note issue.

During this period attempts were made to secure charters for banks in other parts of the province, notably at Brockville and St Catharines. Up to 1833, however, these met with little encouragement.

IX

GOVERNMENT REGULATION OF BANKS

AS the result of the numerous applications for bank charters, the conditions of Canadian banking were brought to the attention of the financial experts of the home government. Accordingly, the Canadian government was invited to consider the desirability of including the following conditions in all future bank charters, whether new or amended :

(1) Suspension of cash payments for sixty days to result in forfeiture of the charter.
(2) Notes issued at any branch to be redeemable both at the branch and at the head office.
(3) Half of the capital of the bank to be paid up before beginning business.
(4) The amount of the discounts on paper bearing the name of any of the directors or officers of the bank to be limited to one-third of the whole discounts.
(5) A bank may not hold its own shares or make advances to the shareholders on the security of their stock.
(6) A statement of the affairs of the bank, as prescribed in the charter, to be prepared weekly, and from these statements a half-yearly return to be made.

(7) The shareholders to be liable for double the amount of their shares.

(8) The funds of the bank not to be loaned upon the security of land or other property not easily disposed of. The business of the bank to be confined to the legitimate operations of banking, namely, making advances upon commercial paper or government securities, and the buying and selling of money bills of exchange or bullion.

These requirements were laid down, not necessarily as new principles, but rather as representing the whole duty of a legitimate bank. The third, fourth, fifth and eighth requirements were at the time recognized and for the most part acted upon by the Canadian banks. The first and sixth were afterwards accepted in principle, the latter in the shape of the present monthly returns. The second and seventh, however, were strongly opposed by the banks at the time; the second because the notes as issued were made payable at different branches, and to comply with it would involve holding double stores of specie; and the seventh because it was held that it would prevent investment in bank stocks. The second condition is now met in another way, and the seventh was soon afterwards accepted, as we shall have occasion to note.

While these matters were under discussion from 1832 to 1834, further attempts were being made to obtain charters for new banks at London, Hamilton, St Catharines and Cobourg. The argument in favour of these banks was also in favour of the adoption of an overrated metallic currency, and showed that what were mainly required in the country were improved markets and increased capital, rather than the greater volume of currency which was called for.

With increasing trade and more rapid returns, the banks began to insist upon shorter periods for discounts. While this improved the trade of the country, it also lent encouragement to more speculative business.

In 1833 the Bank of Upper Canada, through its political influence with the home government, managed to secure the

Upper Canadian share of the exchanges and other business of the imperial government, hitherto practically monopolized by the Bank of Montreal. In 1834 the Bank of Upper Canada had branches at Niagara, Hamilton, Cobourg, Kingston and Brockville, and was doing a large and profitable business. It hoped with the aid of increased capital to forestall the agitation for the establishment of new banks. Its very prosperity, however, and anxiety to expand its capital only increased the desire of the promoters of the new institutions to share in the profits of banking. Though the Bank of Upper Canada was prevented from further increasing its capital beyond £200,000, yet the recently established Commercial Bank was permitted, in 1835, to double its capital, making it also £200,000. The following year it opened its first branch at Brockville. In 1835 the Gore Bank, with headquarters at Hamilton, also received a charter. In this was included for the first time the condition suggested by the home government providing for the double liability of the shareholders.

The prosperity of the country continuing, and speculation, following the American example, having expanded into a veritable boom, during the session of 1836-37 no less than nine new bank charters passed both houses of the Upper Canadian legislature. At the same time bills to increase the capital stock of the three existing banks, the Upper Canada, Commercial and Gore Banks, also passed. The province was saved from the consequences of this deluge by the instructions of the colonial secretary, requiring that all bills dealing with banking or currency should be reserved for the consideration of the home government. This action on the part of the imperial authorities was hotly resented at the time, but reaction was close at hand, and in the scurry for cover in 1837 both the new bank charters and the tyrannous conduct of the home government were alike forgotten.

X

JOINT STOCK BANK PROJECTS

ONE of the bank projects before the legislature of Upper Canada in 1836 deserves special mention on account of its revival after the union of the Canadas. This was the provincial bank scheme of William Hamilton Merritt, that irrepressible optimist and promoter of many schemes for the development of Canada, notably the Welland and other canals. His idea was to make a combination of the best features of public and private banking. The government was to be the predominant partner, alike in the contribution of capital, the management of the bank and the sharing of the profits. Such was the faith of the time in the capacity of banking institutions to create and diffuse wealth, that this provincial bank was expected to pay 5 per cent for capital borrowed in Britain, 6 per cent for that borrowed in Canada, pay 3 per cent interest on deposits, furnish generous dividends to the stockholders, and out of the surplus pay off all the accumulated provincial debt and provide a perpetual revenue for future public expenditures. Naturally, the project was popular throughout the country, but the interests of the private banks were as yet too strong in the legislature.

All of the above banking schemes called for special charters at the hands of the legislature; but several other projected banks, three of which came into actual operation, proposed to conduct their business on the ordinary lines of a joint stock company with unlimited liability on the part of the shareholders, taking as their model the British Joint Stock Bank. Two of these financial institutions were specially designed to meet the alleged cupidity and innocence of the agricultural population. The first institution which sought to meet this crying need was known as the Agricultural Bank. It was organized by a couple of English gentlemen, Captain George Truscott of the Royal Navy, and J. C. Green, a retired commissary-general. The bank, being organized and managed by Truscott, Green and Company, began business in 1834. For a time it had a flourishing business and managed

to maintain a large note issue and a considerable deposit account. It was the first bank in Canada to allow interest on deposits, but was soon followed by the Commercial Bank. It began by accepting and holding as part of its reserves the notes of the Bank of Upper Canada. This policy was considered by the latter bank as quite flattering and was highly commended. Afterwards, however, when the new bank needed specie and, to secure it, presented some of its reserves for redemption, its conduct became highly objectionable and even dishonourable in the eyes of the flattered institution, the Bank of Upper Canada. War was accordingly declared upon it, the regular banks scorning to accept its notes. This, however, having the unexpected result of enlarging the note issue of the despised bank by curtailing the ordinary channels for returning them upon the issuing institution, the chartered banks reversed their policy, and, eagerly accepting the notes, returned them for redemption. This policy proved much more embarrassing, and, indeed, aided considerably in procuring the subsequent collapse of the new bank.

The other joint stock bank appealing to the agricultural sympathies was also assisted into existence by the same naval officer, Captain Truscott. This was named the Farmers' Bank, being the second of that ill-fated line and the first of that name. It managed to get into operation in the latter part of 1835, and had secured a fair amount of business before the combined financial and political crisis of 1837 burst upon the country.

The third of the joint stock banks in Upper Canada was known as the People's Bank, and came into existence in Toronto at the end of 1835. This bank is chiefly notable on two accounts. Shortly after beginning business it obtained as its general manager Francis Hincks, who had lately arrived in Canada from the West Indies, and who, as manager of this new bank, began his brilliant career in Canada. The other notable feature connected with the bank arose out of the first, for, owing to the exceptional ability of its young manager, this was the only Canadian bank which survived the crisis of 1837-38 without the suspension of specie payment.

In Lower Canada the majority of the French Canadians

throughout the small villages in the rural districts, being blissfully ignorant of the financial boom which was sweeping the United States and the English sections of Canada, made few demands for new banks in the lower province. Still, one new bank, the Banque du Peuple, was established under French-Canadian auspices. Its appearance, however, was significant of political rather than financial unrest, and Papineau urged the French Canadians to patronize it rather than the English banks. It was established on the joint stock principle, and began business in 1835. The two chief partners in the project were Messrs Viger and Dewitt, both prominent French Canadians. This bank, once fully established, attracted quite a number of French-Canadian patrons and held its own for many years. Its success led to several attempts to copy it in the rural districts, but without appreciable success. Two of these attempts were at Boucherville and St Hyacinthe.

But of all the joint stock banks established in Canada, none was so notable or well founded as the Bank of British North America, first incorporated in Britain and supported by the leading merchants connected with the British colonial trade in North America. It began business in Canada and the Maritime Provinces in 1836, and in the course of its first year had established branches at Quebec, Montreal, Toronto, St John, Halifax, and St John's, Newfoundland. From the first it was welcomed, not only by the leading Canadian merchants, but by representatives of the established Canadian banks. It was looked upon as likely to be the medium of transferring considerable quantities of British capital and specie to the North American colonies. Although in practice it did not quite meet the expectations of its Canadian brethren in the matter of bringing specie to the country, still it never shared the enmity which the other joint stock banks incurred at the hands of their chartered rivals. Subsequently the Bank of British North America received colonial charters, and although always retaining a certain transatlantic flavour, it has long been accepted as one of the regular Canadian banks. As its branches in Quebec, Montreal and Toronto did not begin business before 1837, they were almost immediately

checked by the crisis of that year, and therefore did not develop any considerable business before the resumption of specie payments.

XI

COMMERCIAL CRISIS OF 1837-38

THE commercial crisis of 1837-38, which came upon Canada very suddenly and unexpectedly, was not due, as often supposed, to the political difficulties which accompanied it, although these political difficulties to a considerable extent were precipitated by the financial crisis and helped in turn to aggravate it. The commercial and financial crisis, as invariably happened during the nineteenth century, came to Canada from Great Britain by way of the United States. The United States was almost entirely dependent upon Britain for the supply of capital to develop its natural resources. To a lesser extent American markets depended upon Britain to purchase their supplies and furnish them with many lines of manufactured goods. When, therefore, anything occurred to paralyse the supply of British capital, many American enterprises in various stages of progress were almost, if not wholly, arrested, with disastrous consequences to the credit of the country. Such conditions were particularly disastrous to the scores of small banking institutions relying mainly upon their note issues and deposits to furnish the means for granting discounts and promoting exchanges. Canada, in turn, depended as completely on the United States for its financial support, and the Canadian banks enjoyed a very considerable circulation for their notes in the neighbouring states, which was all the more profitable inasmuch as the notes were slow in returning. In times of monetary stringency in the neighbouring states, however, Canadian bank notes were naturally gathered up and sent over to Canada for redemption. Canada itself, however, depended mainly upon the United States for its specie supplies, which were obtained in return for bills on the British Treasury.

Just at the height of the period of unusual inflation the Canadian banks could not, of course, withstand a run upon them for specie. Consequently, when the call for specie began, the banks in Lower Canada, led by the Bank of Montreal, considered it essential to their existence and their services to the country to suspend specie payments. Having decided on this policy, they sought the protection of the legislature that they might incur no penalty for continuing business and the maintenance of their note issue after suspension. The Bank of Montreal, conscious of the demands which were likely to be made on it from the adjoining states, strongly advocated the suspension of specie payment immediately after suspension began in the United States. The Bank of Montreal leading the way, it was easy for the other Canadian banks to follow its distinguished example. Suspension of specie payment certainly enabled the banks to continue their accommodation to the general public in the matter of domestic exchange, and thus save the country from a worse fate. On the other hand, when specie payment was suspended the specie on hand was rendered useless for banking purposes, and was, therefore, free to be employed largely for speculative purposes in the international exchanges.

In Upper Canada Sir Francis Bond Head, noted for his unmitigated hatred of everything American, refused for a time to permit the banks of that province to suspend specie payment, because in so doing they would be following American examples. As an inducement to maintain specie payment, he promised assistance from the military chest to the Bank of Upper Canada. The directors of the Canadian banks, however, declared that there was no choice between the severe curtailment of their accommodation to the business of the country and the suspension of specie payment. If, therefore, suspension were not to be permitted, the Commercial and Gore Banks claimed that they should also share in the government assistance promised to the Bank of Upper Canada. In response the executive government authorized the collectors of customs and other government officials to receive at par the notes of the three chartered banks.

When the first alarm and the consequent run on the banks

subsided, the very demand for bank notes, as almost the only available medium for the business of the country, arrested further redemption. Of the outstanding note issue when the crisis developed, from 25 to 30 per cent was returned for redemption.

To avoid the reissue of its own notes, and thus preserve its specie for other issues, the Bank of Upper Canada imported considerable quantities of the notes of the Bank of Montreal, which had already suspended, and employed these in discounts, etc. This itself was an object-lesson to the public that the notes of a bank which had temporarily suspended specie payment were better adapted to the public service than those of the banks which had not suspended, and which, in consequence, were deterred from issuing their own notes. Accordingly, the majority of those having business engagements which required liberal discounts on the part of the banks joined in the demand that the banks should be authorized to suspend specie payment while the crisis lasted, and thus be enabled to deal more liberally with their customers. In the end the government was forced to give way. A special session of the legislature was called for June 19, 1837. The suspension of specie payments was authorized by an act of the legislature, subject, however, to the consent of the governor in council. This last condition was added by the legislative council, although strenuously opposed by the assembly. The terms on which the governor would consent to authorize suspension were especially favourable to the Bank of Upper Canada, with its command of government bills. Indeed, the bank had so adjusted its business that it was entirely to its interest during the financial crisis to maintain specie payments. Curtailing its note issue had confined its attention to speculation in British exchange and specie.

Towards the end of 1837 the crisis had passed in the United States. In January exchange on Britain was at par in New York, and in April it was at a discount, while resumption was general. There being no longer any special opportunity for the Bank of Upper Canada to speculate profitably in exchange, its interest now lay in the opposite direction. In March 1838, when most of the American banks

had resumed payment, the Bank of Upper Canada made the belated discovery that financial conditions were so precarious that it was necessary for it to suspend specie payments, which it accordingly did, with the sanction of the governor, Sir Francis Bond Head, then under recall. The whole transaction was so peculiar that it called forth special criticism on the part of the home government.

The banks of Lower Canada, notwithstanding serious political disturbances in that province, resumed specie payment in May 1838, but the Bank of Upper Canada still resisted all efforts to induce it to resume, and the other Upper Canadian banks waited for it to take the lead in resumption. Through its influence with the government, the bank secured an extension of the period for continued suspension until November 1, 1839. It took full advantage of the time limit, resuming only on November 1, while the Commercial and Gore Banks followed its lead.

During the second vigorous outbreak of rebellion in the neighbourhood of Montreal in the autumn of 1838, the Lower Canadian banks became alarmed and once more sought the privilege of suspending specie payment. This was granted by the Special Council of Quebec. When, however, the troubles were once more over, the Lower Canadian banks resumed specie payment on June 1, 1839.

In consequence of the organization of several private joint stock banks on the one hand, and the general suspension of specie payments on the other, a situation was created between 1837 and 1840 which rendered it quite easy for unscrupulous institutions, and even irresponsible individuals, to flood the country with worthless paper money. The worthlessness of this paper, however, was for the time being almost completely disguised under the general suspension of specie payments, thus illustrating the fundamental weakness of an irredeemable paper currency. Such a currency may, indeed, be quite sound, but there is nothing to test either its quality or its over-issue except its ultimate passing to a discount. Then, however, it is too late to apply any effective remedy. During the period in question, both in Canada and in the adjoining states, all manner of private concerns, from mere international

adventurers to the Toronto city council, were issuing paper money payable at some future period. The urgent need for fractional currency, and the inadequate supply of a respectable medium of exchange, enabled much of this questionable or worthless paper, which extended even to shilling and sixpenny notes, to obtain considerable circulation. Much of it, of course, was never redeemed.

The numerous problems of banking and currency, to which the varied experience of the period of commercial and political crisis from 1837 to 1841 gave rise, furnished fruitful topics for discussion and practical problems for the legislative and executive government of the succeeding period, but though having their origin in the period of crisis, most of these problems must be left to be dealt with in the period between the Union and Confederation.

WESTERN EXPLORATION

1763-1841

WESTERN EXPLORATION, 1763-1841 [1]

I

BRITISH FUR LORDS IN THE GREAT WEST

Early British Trading Expeditions

As we have seen in an earlier chapter, the course of exploration up to the close of the period of French rule in Canada had extended from Lake Superior westward to the Lake of the Woods and Lake Winnipeg; thence, on the one hand, up the Red River to the mouth of the Assiniboine, up the latter to the mouth of the Souris, thence overland to the Mandan villages on the Missouri, and south-westward to the Yellowstone country; and, on the other hand, up the Saskatchewan to the forks, and for some distance up one of the branches of that river. French explorers had also discovered Lakes Manitoba, Dauphin and Winnipegosis. How far they had explored the Saskatchewan and the Red River remains a matter of doubt.

This was the situation when the first British traders from Montreal reached Grand Portage, and pushed on into the vast interior of the continent. These men of English speech had nothing much in common with their French predecessors in the West beyond their intrepidity and resourcefulness. Broadly speaking, the latter were explorers first and only incidentally fur traders, while the former were for the most part fur traders first and incidentally explorers. Nevertheless, the results achieved by them in pushing back the boundaries of the unknown were equally noteworthy. Within

[1] In the preparation of this section, as of that relating to North-Western exploration during the French régime, some use has been made, by permission, of material from the author's *The Search for the Western Sea.*

the period now under consideration, the dream of La Vérendrye, and indeed of the whole line of French explorers in Canada, was realized—the long search for an overland route to the western ocean was brought to a triumphant conclusion. Incidentally, the intervening territory between Lake Superior and the Pacific was pretty thoroughly explored ; the old Kaministikwia route was rediscovered, and a new route explored from Lake Nipigon to the Winnipeg River ; the Red River and the Assiniboine were traced to their head-waters ; the entire course of the Saskatchewan was explored ; Frog and Methye Portages were discovered, and the Churchill, Athabaska and Peace Rivers followed from outlet to source ; several notable passes were found through the Rocky Mountains, and the Fraser and Columbia descended to the sea. In the Far North, a wonderful system of lakes and rivers was discovered, and followed, from Lake Athabaska by the Slave River to Great Slave Lake, and thence by the Mackenzie to the Arctic.

All this, or most of it, was accomplished by Canadian fur traders, men of the North-West Company. The discovery of certain links in the chain belongs, however, to another story—the story of exploration inland from Hudson Bay, by the men of the Hudson's Bay Company. To these men must be given the honour of exploring the Churchill from its mouth to Frog Portage ; of tracing both branches of the Saskatchewan from the forks to the upper waters ; and of discovering Great Slave Lake. To the Hudson's Bay Company belongs also the credit of exploring the Nelson River and the Hayes route ; of discovering the Coppermine River and Great Bear Lake ; and of exploring a large part of the Yukon, Porcupine, Liard, Pelly, Lewes, Finlay and Stikine Rivers.

With these must also be considered the work of British explorers in the Far North, particularly the discovery of Backs River and the exploration of the Arctic coast of the continent. Finally, we have the beginnings of the splendid record of discovery and exploration by officers of the Canadian Geological Survey. Some of this will be considered in a later chapter, as belonging to a period subsequent to the year 1840.

When Jonathan Carver visited Grand Portage in 1767, it was apparently his intention to attempt a journey to the Pacific by way of Lake Winnipeg, the Assiniboine, and the Missouri, but he abandoned the idea on finding that he could not obtain the necessary supplies from the traders at Grand Portage. A similar attempt is outlined in a letter from Sir Guy Carleton (afterwards Lord Dorchester) to the Earl of Shelburne, written in the following year:

> I shall easily find in the troops here [Quebec] many officers and men very ready to undertake to explore any part of this continent, who require no other encouragement than to be told such service will be acceptable to the King, and if properly executed will recommend them to his favour; but as they are unacquainted with the country, the Indian language and manners, 'tis necessary to join with them some Canadians, to serve as guides and interpreters. The gentlemen here are mostly poor and have families; in order to induce them to attach themselves thoroughly to the King's interests, 'tis necessary they should be assured of their being taken into his service for life, and in case they perish on these expeditions, that their widows will enjoy their pay, to support and educate their children.
>
> Should His Majesty think proper to allow the traders to go up to the western Lakes, as formerly, I think a party might winter in one of those Posts, set out early in spring for the Pacific Ocean, find out a good port, take its latitude, longitude, and describe it so accurately as to enable our ships from the East Indies to find it out with ease, and then return the year following. Your Lordship will readily perceive the advantage of such discoveries, and how difficult attempts to explore unknown parts must prove to the English, unless we avail ourselves of the knowledge of the Canadians, who are well acquainted with the country, the language and manners of the natives.

The posts referred to, as appears from the earlier part of Carleton's letter, were those established by the French on the Saskatchewan, and his plan therefore was to find a route to the Pacific by way of that river. Either because the idea did not commend itself to Shelburne, or because the government

was at the time taken up with more urgent affairs, nothing came of Carleton's suggestion. Neither Carver nor Carleton had any real conception of the tremendous difficulties that must be surmounted before an explorer could win to the shores of the Pacific by way either of the Missouri or the Saskatchewan, and in Carver's case at least his view of the route was clouded by gross misconceptions of the character of the waterways to be followed. Nevertheless, within the next forty years parties of explorers were to force their way to the ocean by both routes.

In the confusion immediately following the cession of Canada, the vast region west of Lake Superior, partially explored by the French, and to which the British conquerors had fallen heir, was neglected for a time. However, Carver's narrative makes it clear that some of the British traders had penetrated beyond Grand Portage previous to the date of his visit, 1767; and from a memorial addressed to Lord Dorchester in 1784 by Benjamin and Joseph Frobisher, directors of the North-West Company, we are able to fix this date:

> The first adventurer went from Michilimakinak in the year 1765. The Indians of Lake La Pluye having then been long destitute of Goods, stop't and plundered his Canoes, and would not suffer him to proceed further. He attempted it again the year following, and met with the same bad Fortune. Another attempt was made in the year 1767; they left Goods at Lake La Pluye to be traded with the Natives, who permitted them to proceed with the remainder; and the Canoes penetrated beyond Lake Ouinipique. [This must have been the party of traders which Carver met at Grand Portage.] From this period the Trade of that Country was attempted by other Adventurers with various success, and we were among the number in the year 1769, when we formed a connection with Messrs Todd and M^cGill of Montreal, for the purpose of carrying on the Business, but the Indians of Lake La Pluye, still ungovernable and rapacious, plundered our Canoes, and would not suffer any part of our Goods to be sent further. Before we could be acquainted with this misfortune, our Goods for the year following were at the Grand Portage, and we were then too far engaged to hesitate for a moment. A

> second attempt was made in which we were more successful. Our Canoes reached Lake Bourbon, and thenceforward we were determined to persevere.

Some further details may be gleaned from other sources as to the excursions of these first British traders west of Lake Superior. Carver says that in 1767 they had already penetrated as far as Fort la Reine, on the Assiniboine, where they traded with the Crees and Assiniboines, and perhaps with the Mandans. Sir Alexander Mackenzie, in his *Account of the Rise, Progress, and Present State of the Fur Trade*, gives the names of the first traders who entered the West as Thomas Curry and James Finlay. The former, he says, reached Fort Bourbon, at the west end of Cedar Lake, and the latter ascended the Saskatchewan to Fort Nipawee. From the journal of Matthew Cocking of the Hudson's Bay Company (1772), we learn that Finlay occupied a trading-post on the Saskatchewan, a few miles below the forks, in 1767.

These meagre particulars are all that may be gathered as to the first trading expeditions west of Lake Superior after the cession of Canada. They involved nothing new in geographical discovery. British traders were merely going over the ground already traversed by their French predecessors. The next decade brings us to the first detailed narrative, and also to the first attempt to penetrate beyond the region of French discovery—the first attempt, that is to say, on the part of British traders from Montreal, for, as will appear elsewhere, men of the Hudson's Bay Company had reached the country of the Blackfoot Indians as early as 1754.

The Adventures of Alexander Henry

Alexander Henry, a native of New Jersey, and known as 'the Elder,' to distinguish him from his nephew of the same name, left Montreal in 1761 on a trading expedition to Michilimackinac. His dramatic adventures and narrow escape in the Indian massacre at that fort are familiar to all readers of Parkman. It was not, however, until 1775 that he entered the Great West, by way of Grand Portage. The difficulties of the portage may be gathered from the fact that

it took him seven days 'of severe and dangerous exertion' to carry his canoes and goods to the Pigeon River above the rapids. From the Pigeon River his way lay over the height of land to Rainy Lake and the Lake of the Woods, following what is now the international boundary.

At the point where the Rainy River empties into the Lake of the Woods, Henry found an Indian village, where he obtained a supply of fish and wild rice. The following is his interesting description of the manner in which these supplies were secured:

> The mode with the Indians is first to collect all the provisions they can spare, and place them in a heap; after which they send for the trader, and address him in a formal speech. They tell him, that the Indians are happy in seeing him return to their country; that they have been long in expectation of his arrival; that their wives have deprived themselves of their provisions in order to afford him a supply; that they are in great want, being destitute of every thing, and particularly of ammunition and clothing; and that what they most long for is a taste of his rum, which they uniformly denominate *milk*. The present, in return, consisted in one keg of gunpowder, of sixty pounds weight; a bag of shot, and another of powder, of eighty pounds each; a few smaller articles, and a keg of rum. The last appeared to be the chief treasure, though on the former depended the greater part of their winter's subsistence.

Continuing his way, Henry notes on the west side of the Lake of the Woods 'an old French fort or trading-house, formerly frequented by numerous bands of Chipeways.' This was La Vérendrye's Fort St Charles, the ruins of which were, in 1908, discovered by a party of priests from St Boniface College. Henry descended the Winnipeg River to its mouth, where he found a village of Christinaux or Crees. With these Indians he remained two days, repairing his canoes. 'Though they were drunk the whole time,' he says, 'they behaved very peaceably, and gave me no annoyance.' He noticed that two of the Indians constantly attended him, and that these men could not be prevailed upon to taste liquor.

'They had been assigned us for a guard, and they would not allow any drunken Indian to approach our camp.'

Coasting up the east side of Lake Winnipeg, Henry was joined by Peter Pond, and later by Joseph and Thomas Frobisher, all Montreal fur traders. Pond had been on the Minnesota River, and wintered among the Sioux in 1772-73. Joseph Frobisher had been on the Saskatchewan in 1774, and had made his way north from Cumberland Lake to Frog Portage, where, on the banks of the Churchill, he built a small trading-post, and brought back a rich cargo of furs. This journey marked the first definite advance of the Montreal traders into territory that had not been explored by the French.

The combined parties of fur traders, comprising a fleet of 30 canoes and 130 men, reached the mouth of the Saskatchewan on October 1, and ascended the river to what is now known as The Pas, where they found an Indian village, presided over by a notable chief named Chatique, or The Pelican. Henry gives a most graphic account of this unscrupulous savage, and his ingenious method of exacting tribute:

> On our arrival Chatique came down upon the beach, attended by thirty followers, all armed with bows and arrows, and with spears. Chatique was a man of more than six feet in height, somewhat corpulent, and of a very doubtful physiognomy. He invited us to his tent, and we observed that he was particularly anxious to bestow his hospitalities on those who were the owners of the goods. We suspected an evil design, but judged it better to lend ourselves to the treachery than to discover fear. We entered the lodge accordingly, and soon perceived that we were surrounded by armed men.
>
> Chatique presently rose up, and told us that he was glad to see us arrive; that the young men of the village, as well as himself, had long been in want of many things of which we were possessed in abundance; that we must be well aware of his power to prevent our going further; that if we passed now, he could put us all to death on our return; and that under these circumstances, he expected us to be exceedingly liberal in our presents: adding that, to avoid misunderstanding, he would inform

> us of what it was that he must have. It consisted in three casks of gunpowder; four bags of shot and ball; two bales of tobacco; three kegs of rum, and three guns; together with knives, flints and some smaller articles. He went on to say, that he had before now been acquainted with white men, and knew that they promised more than they performed; that with the number of men which he had, he could take the whole of our property, without our consent; and that therefore his demands ought to be regarded as very reasonable; that he was a peaceable man, and one that contented himself with moderate views, in order to avoid quarrels; finally, that he desired us to signify our assent to his proposition, before we quitted our places.

One cannot withhold admiration from this Indian river baron, who so shrewdly conserved the goose that laid the golden egg; nor is it altogether unpleasing to find the native for once getting the better of the white trader. Henry and his friends made a virtue of necessity, and yielded up the presents to Chatique of the moderate views.

Towards the end of October the traders reached Cumberland House, which had been built in the previous year by Samuel Hearne. They now separated, Henry himself with the Frobishers turning north to the Churchill, and wintering on Beaver Lake, where a substantial fort was built. Here the Montreal traders had decidedly the best of the game. The Hudson's Bay Company had built Cumberland House for the express purpose of checking the encroachments of their Canadian rivals. The Indians were to be intercepted at Cumberland Lake and induced to take their furs down to York Factory on the bay. Now, however, the supply had been tapped above Cumberland House, and the Canadians would get the cream of the trade. From this time forward the rivalry between the Hudson's Bay Company and the Montreal traders—soon to be organized as the North-West Company—was to increase in bitterness, until the situation finally became intolerable, and self-preservation dictated the only possible solution, the merging of the two companies in one. This, however, was not to be for many years to come.

On January 1, 1776, Alexander Henry set forth on a journey of exploration to the prairie country lying between the two branches of the Saskatchewan. Travelling over the ice to Cumberland House, he turned up the Saskatchewan, and after a difficult journey, in which he and his two men were brought uncomfortably close to starvation, reached Fort des Prairies, a little below the forks. Here he was hospitably entertained, and enjoyed the unwonted luxury of buffalo tongues and marrow-bones. The contrast between the meagre fish diet at Cumberland House, not to mention his experience on the journey, and the table at Fort des Prairies loaded with venison, filled Henry with amazement. He was now on the borders of the great plains, where buffalo roamed in countless herds. In one store at the fort he saw fifty tons of buffalo meat, 'so fat that the men could scarcely find a sufficiency of lean.' Such contrasts were familiar enough in the western fur country, particularly in the early days, before some system of provisioning the trading-posts was attempted. Each fort had to depend upon the food supplies in its own neighbourhood, and within a few hundred miles one group of men would live in luxury while another starved.

At Fort des Prairies Henry joined a party of Assiniboines who had brought meat and peltry to the fort, and were now returning to their temporary village. After a seven days' journey they came to the village, where Henry was met by a guard of Indians who conducted him to a lodge set apart for his use. Here he remained for several days, hospitably entertained by the principal chief and his subordinates, and noting with curious eye the manners and customs of the Assiniboines. He was particularly struck with the orderliness of the village, and the authority wielded by the soldiers or guards.

Buffalo Hunting

Henry's narrative contains one of the earliest accounts of the practice of the Plains Indians of hunting buffalo by means of a pound. The pound or enclosure, he says, 'was about four feet high, and formed of strong stakes of birch-wood,

wattled with smaller branches of the same.' The chief with about forty men and a large number of women took part in the hunt.

> At daylight several of the more expert hunters were sent to decoy the animals into the pound. They were dressed in ox-skins, with the hair and horns. Their faces were covered, and their gestures so closely resembled those of the animals themselves, that had I not been in the secret, I should have been as much deceived as the oxen [buffalo].
>
> At ten o'clock, one of the hunters returned, bringing information of the herd. Immediately, all the dogs were muzzled; and this done, the whole crowd of men and women surrounded the outside of the pound. The herd, of which the extent was so great that I cannot pretend to estimate the numbers, was distant half a mile, advancing slowly, and frequently stopping to feed. The part played by the decoyers was that of approaching them within hearing, and then bellowing like themselves. On hearing the noise, the oxen did not fail to give it attention; and, whether from curiosity or sympathy, advanced to meet those from whom it proceeded. These, in the meantime, fell back deliberately toward the pound, always repeating the call, whenever the oxen stopped. This was reiterated till the leaders of the herd had followed the decoyers into the jaws of the pound, which, though wide asunder toward the plain, terminated like a funnel in a small aperture or gateway; and, within this, was the pound itself. The Indians remark that in all herds of animals there are chiefs or leaders, by whom the motions of the rest are determined.
>
> The decoyers now retired within the pound, and were followed by the oxen. But the former retired still further, withdrawing themselves at certain moveable parts of the fence, while the latter were fallen upon by all the hunters, and presently wounded and killed by showers of arrows. Amid the uproar which ensued, the oxen made several attempts to force the fence, but the Indians stopped them and drove them back by shaking skins before their eyes. Skins were also made use of to stop the entrance, being let down by strings as soon as the oxen were inside. The slaughter was prolonged till the evening, when the hunters returned to their tents. Next

> morning all the tongues were presented to the chief, to the number of seventy-two. The women brought the meat to the village on sledges drawn by dogs. The lumps on the shoulders and the hearts, as well as the tongues, were set apart for feasts, while the rest was consumed as ordinary food, or dried for sale at the fort.

Henry says that it had been his intention to penetrate farther into the plains, as far as the Rocky Mountains, but he was persuaded by the Assiniboine chief that the journey was impracticable. He described the Blackfeet as troublesome neighbours, and yet, as will elsewhere be seen, another fur trader, Anthony Hendry, of the Hudson's Bay Company, had spent a winter in the Blackfoot country some eleven years earlier, and had enjoyed the same hospitable treatment accorded by the Assiniboines to Alexander Henry.

Henry returned to Cumberland House in April, and the same month rejoined the Frobishers at Beaver Lake. In June the whole party moved north to the Churchill, where a trading-post was built. It was then resolved to explore the Churchill westward. They ascended the river to Ile à la Crosse Lake, where they met a large party of Athapascan Indians, with whom they returned to their fort at Frog Portage. These Indians were from Lake Arabuthcow, or Athabaska, and told them of a great river, called the Peace River, which descended from the Rocky Mountains. They also assured them that the distance from the mountains to the ocean was not great; and that some of their warriors had been near enough to see it. They spoke of a river called Kiratchinini Sibi, or the Slave River, which flowed from Lake Athabaska to Slave Lake, but Henry could not learn whether or not this lake was the northern sea, or, if not, if it emptied into the sea. As a matter of fact, Henry was within reach of one of the greatest river systems of the continent, and had he pursued his explorations to the north-west might have anticipated the momentous discoveries of Alexander Mackenzie. Great Slave Lake, of which the Indians told Henry, had already been discovered by Samuel Hearne in 1771. Henry, however, was more fur trader than explorer, and took no further part in the opening up of the Great

North-West. He returned to Grand Portage, and thence to Montreal, where he drops out of sight.

Peter Pond in the Athabaska Country

Two years after Alexander Henry left the West, Peter Pond set forth from Cumberland House to build a post in the Athabaska country. He went north to the Churchill, and ascended that stream to Ile à la Crosse Lake, Henry's farthest point westward. From here he was entering unexplored territory. His course lay along a recognized Indian route to the Athabaska, and one that was to become for a hundred years the principal thoroughfare for fur traders and travellers bound for the Peace River country and the Mackenzie valley. A north-westerly course of about twenty miles brought Pond and his men to the narrow channel leading from Ile à la Crosse Lake to Lake Clear. A sharp turn round a narrow neck of land then brought the traders into what was afterwards known as Buffalo Lake. Paddling up this lake for about thirty-six miles, they entered the shallow La Loche River, and dragging their canoes, heavily laden with trading goods and supplies, up its rock-encumbered channel for a distance of twenty-four miles, they entered Lake la Loche, a long narrow lake, so named after the fish found in abundance in this and all the connecting waters. A few miles beyond Lake la Loche, at the source of a shallow creek, Pond and his men crossed the height of land, leaving behind them the waters flowing into Hudson Bay, and facing those whose ultimate destination was the Arctic Ocean. Shouldering their canoes, they carried them over the long, thirteen-mile portage and down to the banks of the Clearwater, a tributary of the Athabaska.

Methye Portage, or Portage la Loche, as it has been variously called, the gateway to the vast northern country, was to know in later years many a famous explorer and fur trader—Mackenzie, David Thompson, Harmon, Franklin, George Back, and a host of others, some of whom at least have left on record their impressions of this beautiful spot. The scene from the summit of the portage, looking down the valley of the Clearwater, has been described as one of the

most charming bits of scenery on the continent. After the weary climb from Lake la Loche, the picture must have been peculiarly grateful and inspiring.

Carrying his canoes and their lading down to the Clearwater, Pond embarked, and after a journey of eighty miles found himself on the waters of the Athabaska, at this point and for the remainder of its course a considerable river, averaging three-quarters of a mile in width. Turning down the Athabaska, he at length came to a point, about thirty miles above the outlet of the river, admirably suited to the requirements of a trading-post. Unloading the canoes, he and his men set to work to build a fort, and before winter set in everything had been got under cover. This fort, long known as 'The Old Establishment,' he made his headquarters for the next six years, while he travelled about the country, from the Saskatchewan to Lake Athabaska, and probably beyond. He discovered Lake Athabaska in either this same year (1778) or soon afterwards, and it is quite possible he got as far as the Peace River. His description of the river is too detailed to have been gathered merely from Indian report. There is no direct evidence that he descended the Slave River to Great Slave Lake, but it is said that in 1786 he sent Cuthbert Grant and Laurent Leroux to build a trading-post on that lake, and his manuscript maps reveal considerable knowledge of the character and extent of the lake. In any event he would not be entitled to the honour of discovering Great Slave Lake, a greater explorer, Samuel Hearne, having anticipated him in 1772.

II

DISCOVERY OF THE WESTERN SEA

Alexander Mackenzie

SHORTLY before the time when British traders first penetrated the country to the west of Lake Superior, there was born in the remote island of Lewis, in the Hebrides, one whose name was to be for ever associated with the exploration of North-Western America. Born at

Stornoway in the year 1763, Alexander Mackenzie came to Canada in 1779. He entered the firm of Gregory and McLeod, Montreal fur traders, and after five or six years' experience in office work, left for the Far West, to take charge of the Churchill district. With him was associated his cousin Roderick McKenzie, a young man of exceptional abilities, whose reminiscences, printed in Masson's *Bourgeois de la Compagnie du Nord-Ouest*, throw an interesting light on the history and methods of the Western fur trade, and the relations of the rival companies.

Alexander Mackenzie, though faithful to his commercial duties, had no particular vocation for the work of a fur trader. A young man of imagination, burning with the desire to achieve something worth while in geographical discovery, he found the opportunity awaiting him. From Fort Chipewyan, on Lake Athabaska, he looked out upon a vast unexplored territory to the North and West. The germs of two great projects were taking form in his mind: one, the discovery of a water route to the Northern Ocean; the other, an overland expedition to the Pacific. The former will be dealt with in connection with the discovery of the Far North. The story of the latter will be told now, as part of the westward movement from the Great Lakes to the Pacific.

Mackenzie, having resolved to find a route through the mountains and the unknown country that lay beyond to the shores of the western ocean, decided to winter on the upper waters of the Peace River, where he could make all his preparations for a start with the opening of navigation in the spring.

He left Chipewyan on October 10, 1792, taking with him two canoes laden with supplies, while some of his men followed in several others. Two days later he reached the Peace River, and on the 19th came to a post built by a trader named Boyer in 1788. On the 1st of the following month he reached the mouth of the Smoky River, a few miles above which he had decided to spend the winter. Some of his men had been sent ahead to make preparations; timber for the fort and palisades was ready, and before Christmas Mackenzie

had the satisfaction of finding himself and his men in comfortable winter quarters.

The winter passed uneventfully, and as spring approached active preparations were made for the journey westward. A strong canoe, twenty-five feet in length, was built, and in it Mackenzie embarked on May 9, 1793. He took with him Alexander Mackay, a capable and reliable officer, six French Canadians, two of whom had accompanied him to the Arctic, and two Indian guides.

As they ascended the Peace River, whose upper waters had never before been explored by white men, Mackenzie was lost in admiration of the beautiful scenery. In his account of his overland journey to the Pacific he says with enthusiasm :

> The west shore of the river displayed a succession of the most beautiful scenery I had ever beheld. The ground rises at intervals to a considerable height, and stretching inward to a considerable distance, at every interval or pause in the rise there is a very gently ascending space or lawn, which is alternate with abrupt precipices to the summit of the whole, or at least as far as the eye could distinguish. . . . Groves of poplar in every shape vary the scene, and their intervals are enlivened with vast herds of elk and buffaloes.

As they made their way up the river, the channel narrowed, and the banks on either side rose ever higher and higher, until the surrounding country was completely lost to view, except ahead, where the mountains now cut across the skyline. A few days later the river valley had developed into a deep gorge, and the stream into a succession of turbulent rapids, up which the canoe was dragged with the greatest toil and difficulty. Finally it had to be portaged round several miles of altogether impossible water, the heavy canoe being dragged up steep precipices and through dense scrub to the comparatively navigable river above. By the end of the month they had reached the forks, where what are now known as the Parsnip and Finlay Rivers combine to form the Peace.

After a good deal of hesitation, Mackenzie decided to

take the south branch, the Parsnip, chiefly because an old Indian assured him that it led by a portage to a great river which flowed into the sea. The Parsnip was in flood, and the journey was hard enough to try the men's patience and endurance to the uttermost. However, on June 12 they reached a small lake, the source of the river. 'This,' says Mackenzie in his journal, 'I consider as the highest and southernmost source of the Unjigah or Peace River.' Scarcely four years since he had stood at the mouth of the Mackenzie, the first white man to descend its mighty waters from Great Slave Lake to the sea. On this day he had reached one of its most remote sources, 2420 miles from its mouth. He had explored the entire distance from the source of the Parsnip to the Arctic Ocean.

A Dash for the Pacific

Portaging his canoe and baggage over the height of land, the explorer found himself on a small but very tumultuous stream, down which he made his way with the utmost difficulty to a much larger one, which was in reality a branch of the Fraser River. He was now on waters flowing to the Pacific, and had completed the first stage of his journey. He paddled down-stream for several days, to a point afterwards named Alexandria, in honour of the explorer. Learning here that the river below was a succession of wild and impassable rapids, he determined to retrace his steps to what was known as the West Road River, from which the Indians assured him a practicable overland route would be found to the shores of the Pacific.

It was necessary now to abandon the canoe, and, after caching the heavier baggage with a quantity of pemmican and other provisions, Mackenzie and his men shouldered the remainder and set out on their long foot journey to the sea. The way lay through a comparatively level country, and they were able to make pretty good progress. The route followed was a recognized native thoroughfare, and from time to time they met with parties of Indians who told them of white traders on the coast, and showed them metal

ornaments and implements, and other articles of European manufacture.

About the middle of July they came to a range of mountains, which they crossed after an exhausting march, and reached the banks of the Bella Coola. They were now within easy reach of the coast. Mackenzie had pushed on ahead of his men, and late at night came to a village of the Coast Indians. Walking boldly into one of the lodges with his baggage, he threw down his burden and sat down upon it. The natives received him without exhibiting the least feeling of surprise, and presently made signs to him to go up to the chief's house. Mackenzie found it to be a large building, set on stout posts some distance from the ground. A broad piece of timber with steps cut in it led to a scaffolding level with the floor.

'By this curious ladder,' says the explorer, 'I entered the house, and having passed three fires, I was received by several people sitting upon a very wide board, at the upper end. I shook hands with them, and seated myself beside a man, the dignity of whose countenance induced me to give him that preference.' Roasted salmon, the staple food of the tribe, was brought and placed before him on a mat. Having satisfied his hunger, Mackenzie took leave of his hospitable hosts, and joined his men outside. 'We laid ourselves down to rest,' he says, 'with no other canopy than the sky, but I never enjoyed a more sound or refreshing rest, though I had a board for my bed, and a billet for my pillow.'

In the morning Mackenzie examined with interest an elaborate embankment or weir built by the Indians across the river, for the salmon fishery. It was about four feet above the level of the water, and was constructed of small trees fixed in the bed of the river in a slanting position, with the heavy ends down. Over these had been laid a bed of gravel, then a tier of smaller trees, then more gravel, and so on alternately until the work was brought to the desired height. Beneath this weir were placed the fishing baskets, into which the salmon fell when they attempted to leap the weir.

'These people,' says Mackenzie, 'indulge an extreme superstition respecting their fish, as it is apparently their only animal food. Flesh they never taste, and one of their dogs, having picked and swallowed part of a bone which we had left, was beaten by his master till he disgorged it. One of my people having also thrown a bone of the deer into the river, a native, who had observed the circumstance, immediately dived and brought it up, and having consigned it to the fire, instantly proceeded to wash his polluted hands.' The natives objected to Mackenzie even taking venison in his canoe, fearing, as they said, that the fish would smell the objectionable food and forthwith abandon the neighbourhood.

Taking leave of these Indians, Mackenzie paddled down the Bella Coola, and about nightfall reached its mouth, where it discharges into North Bentinck Arm. Here he camped for the night, and on the morning of the 20th had the satisfaction of finding himself on salt water. Paddling down the North Arm, he crossed the entrance to the South Arm, and landed at the cape which Vancouver had visited some time before and named Point Menzies. At this place for the first time he experienced hostility on the part of the Coast Indians. Three canoes arrived with a number of natives, whose attitude became so insolent that the voyageurs were alarmed for their safety and urged Mackenzie to return to the river. He would not consent to do so, however, until he had determined his position, which continuous cloudy weather had so far prevented. Finally he succeeded in getting observations both for latitude and longitude, and knew that he was at the entrance to Vancouver's Cascade Canal.

Having completed the object of his journey, he lost no time in parleying with the natives, who were gathering in large numbers and evidently bent on mischief. He was not insensible, however, to the significance of his achievement, and before taking his departure, mixed some vermilion in melted grease, and painted in large characters on the face of the rock this brief memorial of his visit: '*Alexander Mackenzie from Canada, by land, the twenty-second of July,*

one thousand seven hundred and ninety-three. Lat. 52° 20′ 48″ N.'

The return journey was made without serious misadventure, although a party of hostile natives met him at the mouth of the Bella Coola. With characteristic daring Mackenzie, instead of attempting to escape up the river, boldly landed with his men, warned the Indians of the deadly power of his firearms, insisted on the restoration of a number of articles that had been pilfered, and so effectually cowed them that they not only restored the missing articles but also supplied him with fish for his journey. Continuing his way up the Bella Coola, Mackenzie rested for a few hours at the village of the friendly Indians, crossed the mountains, and on August 4 had regained the Fraser River. Twenty days later he was back at his fort on the Peace River. 'Here,' concluded Mackenzie, 'my voyages of discovery terminate. Their toils and their dangers, their solicitudes and sufferings, have not been exaggerated in my description. On the contrary, in many instances language has failed me in the attempt to describe them. I received, however, the reward of my labours, for they were crowned with success.'

III

FRASER'S DESCENT TO THE PACIFIC

The North-West Company on the Pacific Slope

TWELVE years after Mackenzie's memorable journey to the sea, another Scottish explorer, Simon Fraser, also a member of the North-West Company, crossed the mountains by the Peace River Pass, and built a trading-post on the upper waters of the Parsnip. In 1806 he made his way over to the river which was afterwards to bear his own name, descended it to the Nechaco, and ascended this stream to a lake, which he named after another officer of the company, John Stuart. Here a post was built, afterwards known as Fort St James. The same year Fort Fraser was built, near the outlet of Fraser Lake, and in the spring of

1807 Fort George, at the confluence of the Fraser and the Nechaco.

From Fort George, in May 1807, Simon Fraser set forth on one of the most daring expeditions in the history of North American exploration—the descent of the Fraser River, or Tacouche Tesse as it was then called, to the sea. Fraser supposed, as Mackenzie had before him, that this great river was the Columbia. He had been instructed by the North-West Company to follow it to the sea, and take possession of its upper waters on behalf of the company, if he could not anticipate the American explorers, Lewis and Clark, at its mouth. As a matter of fact, Lewis and Clark had reached the mouth of the Columbia overland two years before, and had returned to the East in 1806, about the time the partners of the North-West Company were sending their orders to Simon Fraser to extend their trading territory down to the sea.

Fraser took with him John Stuart, his trusty lieutenant, Jules Maurice Quesnel, another name familiar in the annals of the company, and nineteen voyageurs, with two native guides, in four carefully built canoes. We who know the character of the river that Fraser was about to explore; the ferocity of its current, rushing turbulently for miles on miles between frowning cliffs rising sheer from the water's edge; broken by dangerous, and sometimes impassable, rapids at every turn—may well wonder how any man could think of attempting such a superhuman task, or having attempted it, could possibly win through. Yet Fraser did attempt it, and with a pretty fair knowledge of the dangers to be encountered; and, what is more, he succeeded in the attempt. The story as we read it in his own journal, the simple, unadorned narrative of a man of action, furnishes one of the most dramatic episodes in Western history.

Danger and discouragement met the explorer on the very threshold of his journey. In attempting to run Fort George Cañon, fifteen miles below the fort, one of the canoes was nearly wrecked, and its crew narrowly escaped drowning. Yet Fort George Cañon was but a mild foretaste of what awaited them farther down stream. The following day they got through the Cottonwood River Cañon safely, and camped

for the night at the mouth of a river which they named Quesnel. A small town of the same name now occupies the site of their camp.

An Adventurous Journey

The following day, May 30, they passed the farthest point reached by Alexander Mackenzie in 1793, afterwards known as Alexandria. Fraser was now entering upon a portion of the river never hitherto traversed by white men, and one can well imagine that the ever-changing panorama gained an added interest from this stirring fact. Indeed the scene needed no extraneous interest to command the admiration of any man of intelligence. While lacking the sombre, majestic grandeur of the lower reaches of the great river, with which Fraser was to become sufficiently familiar before he won through to the sea, the country about Alexandria had a beauty of its own, a more human and habitable beauty, a great amphitheatre rising gradually from the banks of the river to the distant, green-clad hills.

The scene, too, was not without its human interest. Native houses were seen from time to time along the shore, and the travellers presently caught sight of a group of Indians watching with mingled curiosity and alarm the approach of the mysterious strangers. As they drew near, messengers could be seen mounting horses and galloping down the river, carrying the extraordinary news, no doubt, to the villages below. Realizing the danger of alarming the Indians, Fraser decided to go no farther until he could get in communication with some of them and convince them that his intentions were altogether peaceful.

Among these Indians, who were of the Atnah tribe, was a boy who could speak a little of the language of the Carriers, a tribe with which Fraser had come in contact, and of whose language he had some slight knowledge. The Atnahs, when they understood the object of Fraser's journey, at once became friendly in their attitude, but urged him earnestly not to attempt to descend the river, which they described as a succession of impassable rapids and waterfalls. Finding

him, however, determined to go on, the chief of the Atnahs volunteered to accompany him as a guide.

Taking leave of the Indians, the explorers continued their journey, and late in the afternoon came to a rapid more formidable than any hitherto met with. It apparently continued for a distance of two miles, a mad torrent of whirling waters, rushing down between perpendicular cliffs. The nature of the ground made a portage next to impossible, and Fraser, after carefully studying the situation, determined to send a picked crew in a light canoe to test the rapids.

The incident is best described in Fraser's own words:

> After passing the first cascade, she lost her course and was drawn into an eddy where she was whirled about for a considerable time, seemingly in suspense whether to sink or swim, the men having no power over her. However she took a favourable turn and by degrees was led from the dangerous vortex again into the stream. In this manner she continued, flying from one danger to another until the last cascade but one, where, in spite of every effort, the whirlpools forced her against a low projecting rock. Upon this the men debarked, saved their own lives and contrived to save the property, but the greatest difficulty was still ahead, and to continue by water would be the way to certain destruction.

As the men were in a perilous situation where they could not help themselves, Fraser and those left behind at once set out to come to their assistance. This, however, was no easy matter. They had been cast ashore at the foot of a high and almost perpendicular cliff, and down this the rescuing party had to clamber as best they could, taking advantage of ledges or projecting rocks, and driving their daggers into crevices of the cliff for temporary support. But if the descent was difficult, the ascent was a herculean task, for the precious canoe must be won to the summit. Steps were cut in the face of the cliff, and a line fastened to the bow of the canoe; some of the men climbed to the summit with the line, and the rest toiled after them supporting the canoe on their shoulders as they crawled up inch by inch. Time and again the lives of the whole party hung by a thread. One false

step would have hurled them all into the boiling waters below. Before dark, however, they and the canoe had safely reached the summit of the cliff.

There still remained the almost equally difficult task of carrying the canoes and lading over the mountain, for there was now no alternative. To most men this would have been literally impossible, but the wiry voyageurs, strong, sure-footed, resourceful, and inured to every hardship, succeeded by superhuman exertions in carrying everything safely over the summit.

The natives had assured Fraser that even if he won his way over the mountain, there still lay before him miles of impracticable navigation, and that if he would abandon his canoes and make his way overland towards the south-east he would come to a great river (the Thompson, as it was afterwards named), by which he would find an easy route to the lower waters of the Fraser, and thence to the sea. It was a tempting alternative, but would mean departing from his instructions, and Fraser rejected it unhesitatingly. His orders, he said, were to follow the river to the sea, and he would do so at all cost.

The Indians had by no means exaggerated the dangers to be encountered. Day after day the explorer and his men had to overcome an almost constant succession of heart-breaking obstacles; now running dangerous rapids, or tracking the canoes down light with no better foothold than a narrow ledge on the face of a sheer precipice; now carrying everything over the cliffs to reach the comparatively navigable water below. On June 9 they came to a wild gorge which seemed to bar absolutely all further progress. Says Fraser:

> Here the channel contracts to about forty yards, and is enclosed by two precipices of immense height which, bending towards each other, make it narrower above than below. The water which rolls down this extraordinary passage in tumultuous waves and with great velocity had a frightful appearance. However, it being absolutely impossible to carry the canoes by land, all hands without hesitation embarked as it were *à corps perdu* upon the mercy of this awful tide. Once engaged,

> the die was cast. Our great difficulty consisted in keeping the canoes within the medium or *fil d'eau*, that is, clear of the precipice on one side and from the gulfs formed by the waves on the other. Thus skimming along as fast as lightning, the crews, cool and determined, followed each other in awful silence, and when we arrived at the end we stood gazing at each other in silent congratulation at our narrow escape from total destruction.

The following day, convinced at last that it was impracticable to continue his route by water, Fraser built a scaffold for the canoes, cached the more bulky articles of his equipment, and made the rest into eighty-pound packs. Shouldering these, he and his men continued their way along the rugged banks of the river, surmounting the more inaccessible cliffs by means of frail Indian ladders swinging from the summit.

At the forks of the Thompson and Fraser, the explorer found a village of the Askettih, or Lillooet, Indians, from whom he learned, to his inexpressible satisfaction, that the river was comparatively navigable from there to the sea. Here also he heard of another great river to the east, running parallel with this one. Some distance up stream he had heard from the Indians of a party of white men who had lately passed down this river. He was at a loss to know what this river could be; for it must be remembered that he still believed that he himself was descending the Columbia. As a matter of fact, the river to the east was the Columbia, and the party descending it was under the leadership of David Thompson, of whom more will be said later.

Procuring a canoe from the Lillooets, Fraser put the heavier baggage on board, in charge of several of the men, while he and the rest continued on foot. A few days later he met a chief of the Hacamaugh, who conducted him to an encampment of the tribe. 'He took me by the arm,' says Fraser, 'and conducted me in a moment up the hill to the camp. Here his people were sitting in rows to the number of twelve hundred, and I had to shake hands with the whole! Then the Great Chief made a long harangue, in the course of which he pointed to the Sun, to the four quarters of the

world, and then to us; he afterwards introduced his father, who was old and blind, and carried by another man, who also made a harangue of some length. The old blind man was placed near us, and he often stretched out both his hands, through curiosity, in order to feel ours.'

On June 30 the explorers reached the mouth of the Coquihalla, where the town of Hope now stands, and had a distant view of Mount Baker. Here they saw seals in the river, and were told by the natives that they might reach the coast on the following day. Embarking at four in the morning, they paddled down stream till sunset, when they encamped in a mosquito-infested grove of gigantic cedars. At four o'clock on the next morning they once more set forward and pursued their journey until they reached a native village some miles below, where they feasted on salmon, berries and dried oysters. Two miles below the village they came to a point where the river divides into several channels, and descending one of these, they at last came within sight of a gulf or bay of the sea, which the Indians called Pas-hil-roe. The natives here became troublesome, and followed them along the banks, brandishing their war-clubs. Supplies, too, were running low, and there was little or no prospect of obtaining anything from the Indians. Very reluctantly, therefore, Fraser turned his face up stream. 'I must acknowledge,' he says, 'my great disappointment in not seeing the main ocean, having gone so near as to be almost within view.' To all intents and purposes he had reached the mouth of the river, but he felt that his task remained incomplete. Before turning back, he managed to get an observation for the latitude, which he made about 49°, and as the mouth of the Columbia was known to be in 46° 20′ or thereabouts, he discovered at last, somewhat to his amazement, and very much to his disgust, that he had not explored the Columbia after all, but another unknown river to the north of it. From a geographical point of view his actual achievement was scarcely inferior to the exploration of the Columbia, and taking into consideration the extraordinary difficulties he had to overcome, it was a much more notable exploit.

IV

EXPLORATION OF THE COLUMBIA RIVER

A Veteran Explorer

IT has already been mentioned that, while Simon Fraser was making his perilous way down the river that bears his name, David Thompson was exploring the Columbia. Though his exploration of the valley of the Columbia forms the most notable of David Thompson's contributions to geographical knowledge, it does not by any means make up the sum of his achievements. Thompson spent some twenty-eight years in the West, first in the service of the Hudson's Bay Company, later in that of the North-West Company, and there was not a year in all those twenty-eight that he did not add something of value to the sum of geographical knowledge. He was a man of extraordinary energy and perseverance, a man of courage and resourcefulness, gifted not only with the enthusiasm of the explorer, but also with the painstaking skill of the trained surveyor. Indeed, the work that David Thompson accomplished was so extensive and varied that it is quite impossible here to do more than touch upon the more salient points. The mere fact that his manuscript journals, now in the Crown Lands Department, Toronto, fill some forty-five volumes of foolscap, will give some idea of the magnitude of his work. As Dr Elliott Coues said: 'The world can never be allowed to forget the discoverer of the sources of the Columbia, the first white man who ever voyaged on the upper reaches and main upper tributaries of that mighty river, the pathfinder of more than one way across the Continental Divide from Saskatchewan and Athabaskan to Columbian waters, the greatest geographer of his day in British America, and the maker of what was then by far its greatest map.'

We will not attempt to follow Thompson through his early years as a western explorer, when he was in the service of the Hudson's Bay Company, and carried out innumerable surveys in the country about the Nelson and Churchill Rivers,

the valley of the Saskatchewan, and the Lake Athabaska country. We find him in 1797 taking leave of the old company and throwing in his lot with the partners of the North-West Company. That same year he made a careful survey of the upper waters of the Assiniboine to its source, and in the autumn made an overland journey to the Mandan villages on the Missouri.

Early in the following year he set forth from McDonald's House, at the mouth of the Souris, on a long journey on foot with dog-teams to the sources of the Mississippi. His companions at the trading-post ridiculed the attempt as impossible at that season of the year; but David Thompson knew no such word as impossible. In all his long experience in the West there is recorded but a single instance of his having started out to reach a certain point and failing to accomplish his object, and in that one case he was defeated by the hopeless ignorance of his Indian guides. Therefore, when he made up his mind to connect the waters of the Red River and the Mississippi, the thing was bound to be accomplished if humanly possible. After a difficult journey, on April 27 he reached Turtle Lake, from which flows Turtle Brook, which Thompson held to be the true source of the Mississippi, as from this place the great river takes its most direct course to the gulf. To David Thompson, therefore, belongs the honour of discovering the source of the Mississippi, a quarter of a century before Beltrami. From Turtle Lake, Thompson descended the Mississippi to the Sand Lake River, and thence by various waterways to Fond du Lac House on Lake Superior.

In 1799 Thompson resumed his work in the Saskatchewan country, surveyed the Lesser Slave Lake River to the lake of the same name, and in the following years made important journeys into the mountains about the sources of the Saskatchewan and Athabaska Rivers. In the spring of 1807 he made preparations for an expedition, which he had long had in mind, through the mountains to the Pacific slope.

He left Rocky Mountain House on May 10, and following the north bank of the Saskatchewan, reached Kootenay Plain on June 3. Three days later he came to the forks, where he

remained for some time making preparations for his journey through the mountains. He reached the summit of what was afterwards known as Howse Pass, and a few miles beyond came to a small stream flowing towards the west. This was Blaeberry River, a small tributary of the Columbia. 'May God in His mercy give me,' piously exclaims the explorer, 'to see where its waters flow into the ocean, and return in safety.' A few days later he stood on the banks of the Columbia. Here he built canoes, and paddled up stream to a lake which he names Kootanae, now Windermere Lake. About a mile below the lake he built Fort Kootanae, and wintered there.

The Columbia from Source to Sea

The following spring he continued his discoveries towards the south, reaching the source of the Columbia in Upper Columbia Lake in April 1808. From the head of this lake he could see another river flowing towards the south. This river he named after his friend Duncan McGillivray, of the North-West Company, who had discovered Howse Pass in 1800. Some confusion has been caused, in the past, in interpreting Thompson's narrative of his explorations west of the Rocky Mountains, from the fact that his nomenclature of rivers and lakes scarcely corresponds in a single instance with the present names. So far as the Columbia is concerned, he did not realize that he had reached its waters until long after he first stood upon its banks, in May 1807. It is little to be wondered at that Thompson failed to recognize this stream, flowing almost due north, as the Columbia, whose mouth he knew to be far to the south. He therefore named it the Kootanae, or, to adopt the modern spelling, Kootenay; and when he reached the true Kootenay, in 1808, he named it the McGillivray, again never dreaming that this stream, flowing to the south, could be a tributary of the river he had just left, flowing in the opposite direction.

Carrying his canoes over the flat portage, Thompson launched on the McGillivray, or Kootenay, reaching Kootenay Falls on May 6 and Kootenay Lake on the 14th. Returning to the fort, he packed his winter's trade of furs, and carried

them over the mountains and down to Rainy Lake House. He returned to Kootenay House about the beginning of November, and sent Finan McDonald to establish a post at Kootenay Falls.

In 1809 he descended the Kootenay to a point some miles below the falls, from which he set out on horseback to the south, crossing the Cabinet Range to Kullyspell, or Pend d'Oreille, Lake, where he built Kullyspell House. He spent the autumn and winter in exploring the surrounding country, and in 1810 again crossed the mountains with his furs. In attempting to return by Howse Pass, he was stopped by the Piegans and turned back. This tribe had acted as middlemen between the traders east of the mountains and the Indians of the western slope, and they were determined to put a stop to the infringement of their monopoly. Thompson, however, had no idea of abandoning his journey through the mountains. As Howse Pass was closed for the present, he determined to find another passage farther north, at the head-waters of the Athabaska.

Unfortunately, provisions were very scarce at Rocky Mountain House, and he and his men had to travel in midwinter through a difficult country. He reached the Athabaska in December, and rested there for a time, gathering what scanty provisions he could for the dash through the mountains. About the end of the year he started for the pass, with dog-sleds and horses, travelling up the frozen bed of the Athabaska. The travelling was bad, the cold intense, and provisions scarce, and the explorer had much ado to keep up the spirits of his men. Finally they reached the summit on January 10, 1811. On the Pacific side the snow was so deep and heavy that the dogs were unable to haul the loads. Everything, therefore, that could be spared was abandoned, and the party pushed on to the Columbia, which they reached on the 18th. At the mouth of Canoe River a rough shelter was put up, and here Thompson and his men spent the rest of the winter. The journey through the mountains had been exceedingly trying, and the explorers were too exhausted and dispirited to go on to Kootenay House until the spring. Thompson at any rate had the satisfaction of having dis-

covered another route through the mountains by way of Athabaska Pass.

In the spring he ascended the river to Kootenay House, and was back at the Pend d'Oreille in May. In June he was at Spokane House, built the previous year, and immediately set forth on an important piece of exploration. He descended Spokane River to its junction with the Columbia, and ascended the latter to Ilthkoyape or Kettle Falls, graphically described many years later by the Canadian artist and traveller, Paul Kane.

After a short rest at Kettle Falls, Thompson turned down the Columbia, and reached the mouth of Snake River on July 9. Here his discoveries connected with those of Lewis and Clark, who had descended the Columbia from Snake River to the sea in 1805. At Snake River Thompson took formal possession of the country on behalf of Great Britain. 'Here,' he says, 'I erected a small pole, with a half sheet of paper well tied about it, with these words on it—"Know hereby that this country is claimed by Great Britain as part of its Territories, and that the N. W. Company of Merchants from Canada, finding the Factory for this People inconvenient for them, do hereby intend to erect a Factory in this place for the commerce of the country around."' Continuing his way down the Columbia, Thompson reached Astoria on July 16. Astoria had been built by the Pacific Fur Company, of which John Astor was the leading spirit, a few months before, and came to an inglorious end the following year, when the post was handed over to the North-West Company, and the name changed to Fort George.

After a few days at Astoria, Thompson returned up the Columbia to the mouth of the Snake River, turned up the Snake River for some distance, and then struck across country to Spokane House, which he reached on August 12. Putting his affairs in order here, he descended the Spokane to the Columbia, and ascended the latter to Kettle Falls. He was once more entering upon new territory. Continuing his journey up the Columbia, he traversed the Lower and Upper Arrow Lakes to Boat Encampment at the mouth of the Canoe River. He reached this place about the beginning

of October 1811, and thus completed his survey of the Columbia.

During the four and a quarter years that had elapsed since he first saw the waters of the Columbia at the mouth of the Blaeberry, he had surveyed every foot of the river from source to mouth, 1150 miles; and, down to the mouth of the Snake River, he was the first white man to explore the Columbia. To recapitulate: in 1807 he ascended the river from the mouth of the Blaeberry to Kootenay House; in 1808 he explored the river up to its source; in 1810 he reached the most northerly point of the Columbia, by way of Athabaska Pass, and ascended it from Boat Encampment to the Blaeberry; in 1811 he descended the Columbia to its mouth, and the same year went up stream to the mouth of Canoe River, thus completing his survey. Meantime he had explored the Kootenay, Pend d'Oreille and Spokane Rivers, and portions of what now constitute the States of Washington, Idaho and Montana, as well as a good deal of Southern British Columbia. In May 1812 Thompson finally left the Pacific slope, crossing the mountains by the Athabaska Pass. He reached Fort William in August of the same year, and proceeded to Montreal. The next two years of his life were devoted to the preparation of his great map of the North-West, and thereafter he was engaged for many years in surveys east of Lake Superior.

V

THE ARCTIC COAST

Samuel Hearne on the Coppermine

THE history of what may be described as the main current of North-Western exploration has now been traced from the head of the Great Lakes to the Pacific. There remains to consider the discovery and explorations of the vast northern region lying between Hudson Bay and the Pacific, including the exploration of the Arctic coast of the continent. With this region are associated, within the

period now under consideration, the names of Samuel Hearne, Alexander Mackenzie, John Franklin, George Back, and several others of secondary importance.

Elsewhere in this work an account is given of the journeys inland from Hudson Bay of Henry Kellsey and Anthony Hendry. These expeditions took place during the period of French rule in Canada, and were directed towards the west or south-west. A decade after the fall of Quebec, Samuel Hearne set forth from Prince of Wales Fort, at the mouth of the Churchill River, on a very different expedition. His direction was towards the north-west, and his object was to reach if possible the mouth of the Coppermine River, rumours of which had reached the fort through parties of Chipewyan Indians.

Hearne marched out of the gates of Prince of Wales Fort on November 6, 1769, but in a little over a month was forced to return, through the treachery of his Indian guides. Towards the end of February of the following year, he again started for the Coppermine, and was again compelled to turn back, partly owing to trouble with his Indians, partly through the loss of his quadrant. On his way back to the fort he met a famous Chipewyan named Matonabbee. Matonabbee asked him if he would make a third attempt to reach the Coppermine, and on Hearne's assuring him that he intended to keep on trying until he found the Coppermine, the Indian offered to go with him as guide, an offer which Hearne gratefully accepted.

On December 7, 1770, Hearne set forth on his third and final attempt to reach the Coppermine. The course of the party was north-west to Nueltin Lake. Here they remained for several weeks gathering provisions. Early in February they crossed the Kazan River, and on March 2 camped on the shores of Wholdaia Lake. They were gradually working westward, keeping south of the barren grounds, Matonabbee's plan being to await the return of the caribou in the spring, and follow them north into the barren grounds, with the assurance of an ample supply of meat.

In May 1771 they reached a small lake named Clowey, in the heart of what still remains an unexplored district.

Here they were joined by two hundred natives, who were on a war expedition against the Eskimos of the Far North. These proved an unwelcome enough addition to the party, but Hearne had to make a virtue of necessity and take them with him.

After a month's rest at Clowey Lake, making final preparations for the dash through the barren grounds to the Coppermine, they started north. By the end of May they had reached Peshew Lake, where most of the women and the heavier baggage were left behind; the men, with a few of the younger and more active squaws, pushing forward with renewed energy. On their way they passed several lakes, which it is next to impossible to identify with known lakes of the present day. On June 20 they came to Cogead Lake, and the following day crossed a branch of the Conge-ca-tha-wha-chaga River, being ferried over by a party of Copper Indians, who examined Hearne and all his belongings in open-mouthed astonishment. He was the first white man they had ever seen.

For some miles beyond Conge-ca-tha-wha-chaga the course lay through a mountainous country, and the natural difficulties of the way were increased by violent snow-storms. Finally, however, on July 13 they reached the Coppermine, about forty miles from its mouth. It proved disappointingly small to Hearne, who had looked for a mighty stream, navigable for ocean ships. On the contrary, at this point it was scarcely navigable for canoes.

The war-party now made preparations to surprise an Eskimo encampment about thirty-two miles down the river, having sent spies ahead to ascertain its whereabouts. Hearne was anxious to prevent the raid, but found himself quite powerless. The Chipewyan warriors crossed the river, stripped, put on war-paint, armed themselves with spears and shields, and stole down the river during the night. Hearne accompanied the party, hoping to find some means of checking the ferocity of his savage companions, but he might as well have tried to control so many wild animals.

The Eskimos were surprised in their sleep and could make no resistance. 'Men, women and children,' says Hearne,

'ran out of their tents stark naked, and endeavoured to make their escape; but the Indians having possession of all the land side, to no place could they fly for shelter. One alternative only remained, that of jumping into the river; but as none of them attempted it, they all fell a victim to Indian barbarity.' The explorer to his horror saw a young Eskimo girl speared at his very feet, so close that when the first spear was thrust into her side she fell down, writhing round his legs. He pleaded for her life, but the Indians jeered at him, asking him contemptuously if he wanted an Eskimo wife.

The site of the massacre has ever since been known as Bloody Fall. It was about eight miles above the mouth of the river. Hearne had made a rough survey of the river from the point where he first reached its banks, and now continued it down to the mouth. Thick fog prevented an observation, but he estimated the mouth of the Coppermine to be in about lat. 71° 54′ N and long. 120° 30′ W. He was about two hundred miles out in his latitude and about five degrees west of the true longitude. This extraordinary error subsequently threw doubt on the authenticity of his discovery of the mouth of the Coppermine, until, in 1821, Sir John Franklin corroborated his story of the massacre from evidence found on the spot.

Hearne took formal possession of the country on behalf of the Hudson's Bay Company, and after an unsuccessful search for the much-talked-of copper-mines, set out on his return journey, taking a course more to the west, which brought him down to the Yellowknife River, and finally to Great Slave Lake, which he reached on December 24, 1771. He calls the lake Athapuscow, and for that reason some historians have supposed that he must have reached Lake Athabaska. A comparison of his narrative with a modern map will, however, make it perfectly clear that the lake he reached on December 24, and which he calls Athapuscow, could have been none other than Great Slave Lake.

Crossing the lake, Hearne ascended the Slave River for forty miles, and then turned off to the east, traversing a region that is still an unmapped wilderness, of which

practically nothing is known beyond the meagre particulars of Hearne's narrative. Vast herds of buffalo were met with in this region of the Far North, as well as moose and other big game. About the middle of May 1772 the explorer crossed the Dubawnt River, and by the end of June was once more in Prince of Wales Fort, after an absence of eighteen months and twenty-three days.

Alexander Mackenzie's Arctic Expedition

Seventeen years after Hearne returned from his Coppermine expedition, another adventurous fur trader, Alexander Mackenzie, also essayed a journey to the mouth of one of the great northern rivers, which was ever after to bear his name. Starting from Fort Chipewyan on June 3, 1789, and coasting along the shore of Lake Athabaska, Mackenzie entered the Slave River, and camped the first night on its banks above the mouth of the Peace. He notes the peculiar character of the Slave River, which under normal conditions empties its waters into Great Slave Lake, but when the water is high on the Peace River flows back into Lake Athabaska. The journey to Great Slave Lake was made without serious incident, and on June 9 the party reached Leroux's post, at that time the most remote establishment of the fur traders. Although the weather had been quite warm coming down the river, and they were plagued with gnats and mosquitoes, the lake was found to be still covered with ice, and they were detained at the fort five days until a strong westerly wind broke up the ice and opened a passage to the northern shore. Several more days were lost in crossing the lake from island to island, and it was not until the 21st that they reached the mainland. Here Mackenzie met a party of Red Knife or Copper Indians, whom he questioned closely as to the nearest route to the great river he was seeking, but they could give him no information beyond what he already had, that it flowed out of the western end of the lake.

The better part of a month had now been lost, and the explorer had not yet even gained the entrance to the river which he hoped would bear him to the sea. Of the character and course of that river he had nothing but the vaguest

Indian reports. He was uncertain whether it emptied into the Arctic or the Pacific, but this at least he knew: the journey must necessarily be a long one, and he must go and return within the compass of the brief northern summer. No further time must therefore be lost in gaining the mouth of the river. He pushed boldly across the numerous small bays of the north shore, rounded Point aux Esclaves, doubled Big Island, and on the morning of the 29th found himself at the entrance to the mighty stream he was seeking. A steady breeze from the east enabled him to make good progress under sail, and on July 1 he passed the mouth of the River of the Mountains, or the Liard, where Fort Simpson was afterwards built.

On the Mackenzie River

As he descended the river, Mackenzie found its banks inhabited by tribes to whom the white man was absolutely unknown. They fled at his approach, and it was only with the greatest difficulty that the explorer could get into communication with them. Their household appliances and weapons were of the most primitive description. They used stone axes fastened with green deerskin to a wooden handle. Their bows were five or six feet long, with strings of sinews. The arrows were barbed with bone, flint, iron, or copper, the iron no doubt procured from the more southerly tribes, the copper from the Red Knives. Their spears were barbed with stone, and were used chiefly for attacking caribou in the water. They had flat sharp-pointed daggers made of horn or bone; and pogamagans or clubs made from the horn of the caribou, the branches cut off except that which forms the extremity. This latter weapon they employed in war and the hunt.

On July 2 the Rocky Mountains came in sight at the point where they most nearly approach the river. 'We perceived,' says Mackenzie, 'a very high mountain ahead, which appeared, on our nearer approach, to be rather a cluster of mountains, stretching as far as our view could reach to the southward, and whose tops were lost in the clouds.' When they came abreast of the mountains, whose

summits seemed barren and rocky, while their declivities were covered with small timber, Mackenzie was struck with their appearance. 'They appeared,' he says, 'to be sprinkled with white stones, which glistened in the sun, and were called by the Indians *manetoe aseniah*, or spirit stones.' He suspected that these 'spirit stones' were nothing but talc, though they possessed more brilliant whiteness; but on his return journey found that they were merely patches of snow. Franklin, who passed this way in 1825, noticed the same brilliant whiteness of the mountains; they appeared white as marble in the glare of the northern sun. Here the river turns abruptly from a west-by-north course to due north. The mountains cross the river some distance below, and for several hundred miles the river flows between two parallel ranges, the eastern being always in sight.

A few days later the explorer landed on the right bank of the river and surprised a party of natives, who fled to the woods at his approach. After much parleying, the Indians were persuaded to return, and a timely present of knives, beads and other trinkets secured their friendship. They proved to be of the Slave and Dog-rib tribes. They could give no information as to the course and character of the river below, but one of them was induced to accompany the party as guide. That day Mackenzie passed the mouth of the Great Bear River, and noted the clear greenish hue of its waters, like those of the sea. Camp was made at the foot of a rocky hill, a few miles below the Great Bear River. The guide told them that on the summit of this hill it blew a storm every day throughout the year.

Mackenzie, knowing that if he was to gain the mouth of the river at all it must be done within the next few days, pushed forward with redoubled energy, embarking at four, three, or even two o'clock in the morning, and taking full advantage of the long northern day. Whenever natives were seen on the banks he landed and questioned them through his interpreter, but could elicit very little information as to the course of the river or the distance to the sea. The Indians were invariably shy and suspicious. Mackenzie tells of one old philosopher who, when the rest of his band

fled, calmly approached the white men, 'and represented himself as too far advanced in life, and too indifferent about the short time he had to remain in the world, to be very anxious about escaping from any danger that threatened him.' At the same time he 'pulled his grey hairs from his head by handfuls to distribute among us, and implored our favour for himself and his relations.' The guide removed his fears, and persuaded him to recall the fugitives.

Continuing their journey, and landing from time to time at encampments of the natives, where they were able to obtain fish of several varieties, and occasionally hares and partridges, in exchange for beads and other trinkets, they reached the ramparts, where, says Mackenzie, 'the river appeared to be enclosed, as it were, with lofty, perpendicular white rocks.' The Indians farther up the river had warned him of a great and dangerous rapid at this place, but Mackenzie found no difficulty in winning through. 'The river at this place,' he says, 'is not above three hundred yards in breadth, but on sounding I found fifty fathoms water.' The majestic walls of limestone that here shut in the great river for a distance of three or four miles, have excited the admiration of many later travellers.

Three days later Mackenzie obtained an observation which convinced him for the first time that the river must flow into the 'Hyperborean Sea.' He was approaching the delta, and the river widened as he advanced and ran through a number of channels formed by islands, some little more than banks of mud and sand, their banks faced with solid walls of ice. The channels were so numerous and bewildering that Mackenzie was puzzled which to follow. Although the guide urged the easternmost, as being farther from the dreaded Eskimos, he decided to take the middle channel, which seemed to be the largest and ran almost due north. His men, who had been troublesome for some time past, were now almost in a state of panic, and nothing but his masterful personality kept them to the journey. To satisfy them, he promised to turn back if the sea was not reached within seven days. Indeed, the low state of the provisions made such a decision inevitable. The explorer sat up all

night to observe the sun, which at midnight was well above the horizon.

Continuing his way down the middle channel, between high banks covered with short grass and flowers, he came to a widening of the river which he supposed to be a lake, but which was really the mouth of the river. He steered his course for a high island about fifteen miles distant, from the loftiest point of which he had a wide view in every direction. Solid ice extended from the south-west around to the east. To the south-west he could dimly see the chain of mountains, and many islands lay to the east.

On the Arctic Shores

For some reason, neither he nor his men realized that the great object of their journey had been attained. His men, he says, 'could not refrain from expressions of real concern that they were obliged to return without reaching the sea.' Indeed, 'the hope of attaining this object encouraged them to bear without repining the hardships of our unremitting voyage. For some time past their spirits were animated by the expectation that another day would bring them to the *Mer d'Ouest*, and even in our present situation they declared their readiness to follow me wherever I should be pleased to lead them.'

On Monday, July 13, he notes in his journal, 'We had no sooner retired to rest than some of the people were obliged to rise and remove the baggage on account of the rising of the water.' Even this significant circumstance failed to satisfy Mackenzie, who took it to be merely the result of a high wind. About noon he took an observation which gave 69° 14′ N latitude, and the meridian variation of the compass was 36° E. The longitude he found by dead reckoning to be 135° W.

He was awakened the following morning by a commotion among his men, who cried out that they saw a great many strange animals in the water. 'I immediately perceived,' he says, 'that they were whales; and having ordered the canoes to be prepared, we embarked in pursuit of them. It was, indeed, a very wild and unreflecting enterprise, and it was a very fortunate circumstance that we failed in our attempt

to overtake them, as a stroke from the tail of one of these enormous fish would have dashed the canoe to pieces.'

The Return Voyage

After an unavailing search for some of the natives, Mackenzie decided to return up the river. Before leaving the island, which he had named Whale Island, he ordered, he says, 'a post to be erected close to our tents, on which I engraved the latitude of the place, my own name, the number of persons which I had with me, and the time we remained there.' The following morning he again noticed the rising of the water. 'As the wind had not changed,' he says, 'and did not blow with greater violence than when we went to rest, we were all of opinion that this circumstance proceeded from the tide.'

The return journey was much more difficult than coming down stream. A strong current had to be overcome, and for many weary miles it was necessary to tow the canoes along the shore. From some of the Indians met by the way he learned of a great river to the west, which flowed into the sea, and at the mouth of which there was a white man's fort. This, he says, 'I took to be Unalaska fort, and consequently the river to the west to be Cook's River; and that the body of water or sea into which this river [the Mackenzie] discharges itself at Whale Island communicates with Norton Sound.' The river was no doubt the Yukon. Mackenzie tried to induce one of the Indians to guide him to the western river, but without success.

A few miles above the Great Bear River the explorer noticed fire on the banks of the river, and on investigating found it to be a blazing seam of coal. Franklin, in 1825, found the coal still burning; and the Canadian Superintendent of Forestry, descending the river in 1906, reports that 'for upwards of two miles along the right bank smoke is distinctly observed from fires still burning far down in seams of coal, or rather lignite'—one hundred and seventeen years after Mackenzie's visit! On August 22 the explorer reached the entrance to Great Slave Lake, and on September 12 was back at Fort Chipewyan, after a journey of one hundred and two days.

VI

THE QUEST OF THE NORTH-WEST PASSAGE

Journeys of Sir John Franklin

THE expedition of Hearne and Mackenzie had resulted in the discovery of two of the great rivers of the Far North, of Great Slave Lake, and a number of minor lakes, and of a large section of what is now Northern Canada. These expeditions were also instrumental in silencing finally the old belief in a passage or channel through the northern part of the continent from Hudson Bay to the Pacific. Further, they fixed two definite points on the Arctic coast of the continent—the mouth of the Coppermine and the mouth of the Mackenzie. Thereafter the efforts of explorers in the Far North were largely directed to connecting these two points, and tracing the coast east of the former and west of the latter. Only a portion of this series of notable explorations comes within the period now under consideration, but it embraces the work of one of the most indefatigable of northern explorers—the ill-fated Sir John Franklin.

Captain Franklin led his first expedition to the Arctic coast of America in the years 1819-22. Under instructions from His Majesty's government, he was to explore the coast to the east of the mouth of the Coppermine; to correct as far as possible the very imperfect geography of the northern interior of the continent; to take astronomical and meteorological observations; to observe the dip and variation of the needle; and to study the curious phenomena of the aurora borealis.

Franklin sailed from Gravesend in May 1819, with Dr John Richardson, George Back and Robert Hood, all of whom did notable work on this expedition. Richardson and Back were themselves destined to lead subsequent expeditions to the same far northern region. Franklin reached York Factory about the end of August. Taking the Hayes route into the interior, he arrived at Cumberland

House on October 22. He remained there until January 1820, and then left for the north with dog-sleds and on snow-shoes, reaching Fort Chipewyan towards the end of March.

From Chipewyan Franklin was to explore a new route to the sea by way of the Yellowknife River and the Coppermine. Hearne, it is true, had come through this part of the country on his return journey in 1771, but he travelled overland in winter eastward of both the Coppermine and Yellowknife, without exploring the upper waters of the former or any portion of the latter. Franklin and his party reached Fort Providence, on the northern side of Great Slave Lake, in July, and there made final preparations for the northern expedition. Here his party was augmented by W. F. Wentzel, of the North-West Company, and several guides and interpreters, one of whom had been with Hearne, and remembered the Bloody Fall massacre.

They set out from Fort Providence in August, and ascended the Yellowknife River to Winter Lake. Here the Indian guides refused to go farther, on account of the approach of the winter season, and Franklin was compelled reluctantly to give up his plan of proceeding at once to the Coppermine. He therefore built a small post, which he named Fort Enterprise, and settled down for the winter, first, however, sending Back and Hood with some of the men in a light canoe to ascertain the distance and size of the Coppermine River.

In June 1821 the whole party crossed the height of land to the Coppermine, dragging the canoes over the ice and snow. They found the ice on the river still solid, and it was not until the end of the month that they were able to embark. A few days later they encountered a herd of musk-oxen, of which Franklin gives an interesting account; and on July 7 passed a portage leading to Great Bear Lake. Five days later Dr Richardson climbed a lofty hill near the river and had his first view of the sea. The following day the party reached Bloody Fall, where they found an encampment of Eskimos, who fled at their approach, with the exception of one old man, who was too feeble to make his escape. From him, after his fears had been allayed, Franklin obtained much

valuable information as to the character of the country and the prospects of obtaining game for the support of the party.

The following day the party continued their journey to the mouth of the Coppermine, and Franklin immediately made preparations for his voyage along the coast to the east. Before leaving, he named the most conspicuous cape near the mouth of the river Cape Hearne, after Samuel Hearne, and another promontory after Alexander Mackenzie —the two explorers who had preceded him overland to the shores of the Arctic. 'The position of the mouth of the river,' he says, 'differs widely from that assigned to it by Mr Hearne, but the accuracy of his description, conjoined with Indian information, assured us that we were at the very part he visited.'

For twenty-eight days Franklin and his men followed the northern coast of the continent, navigating these Arctic waters in two frail canoes, now threatened with destruction by masses of floating ice driven by the storm, now in imminent peril of being driven ashore on a rock-bound coast. Occasionally the hunters secured a lean deer or bear, sometimes only a few unfledged geese or ducks, once a young white fox, oftener nothing at all. The supply of pemmican finally ran low, and it became absolutely necessary to return before they were brought to the point of starvation. Franklin had followed the coast to a point which he named Cape Barrow, thence down to the foot of a deep inlet called Bathurst Inlet, and around Melville Sound to his extreme point, which he named Turnagain. Here the coast bore away once more towards the east, and Franklin was convinced that a clear passage lay beyond as far as Repulse Bay, which he had hoped to reach on this expedition. As a matter of fact he had actually travelled 555 miles along a deeply indented coast, although at Point Turnagain he was only six and a half degrees to the east of the mouth of the Coppermine.

His intention had been to return to the Coppermine, but the length of the voyage and the scanty stock of provisions made it imperative to find a shorter route across the barren grounds to Fort Enterprise. Returning, therefore, to Arctic Sound, he ascended Hood's River to Wilberforce Falls,

where he abandoned the large canoes and constructed out of their material two smaller ones to be used in crossing any rivers that might obstruct their progress. Hood's River, above the falls, proved too rapid and shallow to navigate, and it was determined to make up the ammunition, provisions and other indispensable articles into ninety-pound packs, and march overland by the most direct route to Point Lake on the upper waters of the Coppermine. The last of the pemmican was eaten on the evening of September 4, and nothing remained but a little condensed soup. An occasional partridge or alpine hare and the fortunate shooting of a musk-ox kept the party going for the next few days, and they were then reduced to *tripe de roche*, an unpalatable but slightly nutritious lichen, the last resort of travellers in these inhospitable regions. As they approached the Coppermine they were driven to even more unpalatable fare. 'We refreshed ourselves,' says Franklin, 'with eating our old shoes, and a few scraps of leather.' The canoes having been abandoned on the way, several days were lost in vain attempts to cross the Coppermine, and it was not until October 4 that the party, now desperately weak and despondent, were able to get over to the south bank. Back, with three of the men, was immediately sent forward to Fort Enterprise to bring relief. A few days later it was decided that Franklin, with most of his men, should follow Back to the fort, while Dr Richardson and Hood, who was too weak to travel, and a sailor named Hepburn, should remain behind at a camp where *tripe de roche* was fairly abundant. After a desperate journey Franklin and the men reached the fort, only to find it deserted, with no vestige of provisions. Back had pushed on to Fort Providence, in a last desperate effort to secure relief. On the 29th Richardson reached the fort, bringing the melancholy intelligence of Hood's death. One of the voyageurs, crazed with hunger, had shot him, and threatened the others. In self-defence Richardson had been compelled to shoot the murderer.

In the meantime Back was painfully making his way towards Fort Providence, under conditions of extreme hardship. Fortunately, a party of Indians was met with on

November 3, and an ample supply of provisions sent back to Fort Enterprise. Two of the voyageurs had died, and Franklin, Richardson and Hepburn were reduced to skeletons. For nearly a month they had lived on such apology for food as wolves would have rejected. The survivors remained at Fort Enterprise until they had regained sufficient strength to travel, and then set out for Fort Providence with the Indians. In the spring of 1822 they took the roundabout route to York Factory, and sailed thence for England.

Undismayed by his terrible experience in the barren grounds, Franklin returned to America in 1825, again accompanied by Richardson and Back, and a naval officer named Kendall. He was under instructions from the Admiralty to connect the mouth of the Mackenzie with Icy Cape, reached by Captain Cook in 1777, and, in the other direction, with the mouth of the Coppermine. Richardson, with a boat party, was to take the eastern section, while Franklin himself would survey the coast to the west.

From information obtained on his previous journey, Franklin determined to winter on Great Bear Lake, where game and fish, particularly the latter, could be had in abundance. When he reached Fort Norman in August 1825, he sent a party up the Bear River to the lake to build a fort—Fort Franklin—while he made a hurried reconnaissance to the mouth of the Mackenzie. The winter was spent in surveying the coast of Great Bear Lake and obtaining a valuable series of meteorological and magnetic observations. Neither fish nor game failed them, and Fort Franklin was not destined to carry such unpleasant associations as clung to Fort Enterprise.

Leaving his winter quarters in June 1826, Franklin reached the mouth of the Mackenzie in eleven days. Here he and Richardson parted, the former to travel west, the latter east. In place of the frail canoes of the previous expedition, Franklin had now provided himself with four stout boats. His own he named the *Lion* and the *Reliance*; Richardson's were the *Dolphin* and the *Union*. On the 17th Franklin reached Herschel Island, where a post of the Royal North-West Mounted Police is to-day maintained. His further

progress was constantly impeded by ice and fog, and a month later he had not got beyond a small reef (Return Reef) in lat. 70° 11′ N, long. 145° 50′ W, a distance of 374 miles from the mouth of the Mackenzie, but still a long way from Icy Cape, and 160 miles from Point Barrow, the north-western extremity of the continent. Finding further progress impossible, and not being equipped or provisioned for a winter on the Arctic coast, Franklin reluctantly returned to Fort Franklin.

Meanwhile Richardson had been more fortunate. After a slight skirmish with a band of Eskimos, he proceeded eastward along the coast, rounded Cape Bathurst on July 18 and Cape Parry five days afterwards. A few days later he entered Coronation Gulf, having had sight for some time of land to the north, which he named Wollaston Land, and on August 8 reached the mouth of the Coppermine, having completed the survey of an important section of the Arctic coast, discovered one of the great Arctic islands, and obtained a great deal of invaluable scientific data, without any serious accident. Ascending the Coppermine to Bloody Fall, he abandoned the boats and heavy stores there, continued up the river for some distance, and then struck overland for Great Bear Lake. A party of Indians met with on the way guided him round the lake to Fort Franklin, which he reached on September 1, and where Franklin joined him before the end of the month.

Futile Expeditions to the Arctic

While these northern explorations were being made from the land side, other expeditions had been sent into the Arctic seas in search of the North-West Passage. Captain John Ross sailed in 1818, with Lieutenant William E. Parry as second in command. He was instructed to proceed by way of Davis Strait and endeavour to find a water route to Bering Strait. He reached Lancaster Sound and sailed up it fifty miles, when, concluding that it was nothing but a bay, he returned to England.

The following year Parry, who had not shared his commander's views as to the nature of Lancaster Sound, was

given the command of another expedition. He forced a passage through the ice of Baffin Bay, entered Lancaster Sound, where he was fortunate enough to find open water, and sailed through to Barrow Strait and thence into Melville Sound. Wintering on Melville Island, he made an attempt in the spring of 1820 to force a passage westward, but finding his way completely blocked by heavy ice, he returned to England.

Parry sailed again for the ice-bound Arctic seas in May 1821, with Captain Lyon, in the *Fury* and *Hecla*. He had been instructed to attempt a passage by way of Hudson Strait and Frozen Strait, north of Southampton Island. Parry reached Frozen Strait and sailed into Repulse Bay, which he found completely land-locked. Wintering off Melville Peninsula, he sailed north in 1822, and discovered Fury and Hecla Strait. He found its western end blocked with ice, and after wintering again in the Arctic, was compelled to return to England without getting through the strait.

In 1824 Parry set out on his third attempt to find the North-West Passage. He again sought a route by way of Lancaster Sound, hoping to get down into Prince Rupert Inlet and find a passage between North Somerset and Boothia Peninsula, but heavy ice and violent gales frustrated all his efforts both in 1824 and the following year, and after losing one of his ships he sailed for home in the other.

Captain Lyon, who had accompanied Parry in 1821, was sent to Repulse Bay three years later, to attempt a survey of the coast to Point Turnagain, by means of a sledge party, but he was compelled to return without even reaching Repulse Bay.

Eleven years after his bootless voyage of 1818, Captain John Ross again attempted the North-West Passage. Sailing from Woolwich in 1829, he passed through Lancaster Sound and entered Prince Rupert Inlet, which he found comparatively clear of ice. Sailing down the eastern coast of North Somerset, he passed Bellot Strait without discovering it, and wintered off Boothia Peninsula.

During the winter his nephew, James Clark Ross, made

extensive explorations of Boothia Peninsula and King William Land, and in 1831 discovered the north magnetic pole, which his observations placed at Cape Adelaide, on the west coast of Boothia Peninsula, in lat. 70° 5′ N, long. 96° 44′ W.

For three years Ross remained on Boothia, his vessel being fast in the ice. In May 1832 he and his men were compelled through the failure of the provisions to abandon the ship, and sail in boats to North Somerset, three hundred miles distant, where Parry had cached stores in 1825. Here they wintered, and in 1833 managed to reach a whaler, by which they were conveyed home, after spending five years in the Arctic regions.

Back Explores the Arctic Coast

Meanwhile, in 1833, Captain Back had been sent out to search for traces of Ross and his men, whose protracted absence had caused grave anxiety. Sailing to Montreal, he took the fur traders' route to Fort William, Cumberland House and Fort Chipewyan, thence to Fort Resolution on Great Slave Lake. He had determined to find a new route to the Arctic coast by way of the Great Fish River, and built Fort Reliance at the eastern end of the lake. Here he wintered, with the intention of setting out for the north as soon as navigation opened in the spring. Before settling down for the winter, however, he made a preliminary survey as far as the source of the Great Fish River, ascending the Hoar Frost River from Great Slave Lake to Cook Lake, thence to Walmsley Lake and Artillery Lake. The Lockhart River brought him to Clinton-Golden Lake and Aylmer Lake, and, following the north shore of the latter, he portaged over the height of land to a small lake which he named Sussex, and which proved to be the source of the Great Fish River. He descended the river for some little distance to ascertain its general character, and then returned to Fort Reliance.

The winter passed without remarkable incident, and before navigation opened in 1834 Back had word of the safety of Ross. One object of his expedition therefore became unnecessary. There remained, however, the very important task of exploring the Great Fish River to the sea, and tracing as much as possible of the coast to the east, and he at once

set about making preparations for the journey. Leaving Fort Reliance in June, by the end of the month he reached Musk-ox Lake, and continued his way down the river, thenceforth to bear his own name. It was hard going, for the stream was not only broken by many turbulent rapids and whirlpools, but the lakes into which it expanded every little while were still covered, for the most part, with ice.

About the middle of July he reached Lake Beechey, and was disappointed to find the course of the river turn abruptly to the south-east. From the reports of the Indians he had been led to suppose that the Great Fish River flowed into Bathurst Inlet, but he was disappointed to find that the indications pointed rather to Hudson Bay. However, it must be traced to its outlet, no matter where that might be. Indications of Eskimo occupation multiplied as he advanced, but the natives themselves were not met with until near the end of the journey, when the expedition was approaching the sea-coast. After some difficulty Back overcame their natural suspicions, and obtained from them some important information as to the trend of the coast. He had already discovered, by the changed course of the river, that its outlet was probably in the north; and on July 29 he reached its mouth, which 'after a violent and tortuous course of five hundred and thirty geographical miles, running through an iron-ribbed country without a single tree on the whole line of its banks, expanding into fine large lakes with clear horizons, most embarrassing to the navigator, and broken into falls, cascades and rapids, to the number of no less than eighty-three in the whole, pours its waters into the Polar Sea in latitude 67° 11′ N, and longitude 94° 30′ W.'

Before returning, Back traced the coast as far as Point Ogle, the extreme north-eastern point of Adelaide Peninsula, and gave names to a number of capes and islands between Point Ogle and the mouth of the river. The finding of a large piece of drift-wood, which from its species and condition had evidently come from the mouth of the Mackenzie, convinced Back of the set of a current from the west along the coast, and that consequently an unbroken channel must stretch from the mouth of the Mackenzie to the mouth of the Great

Fish River. The return journey up-stream occupied a little more than a month, and on September 27, 1834, Back was again at Fort Reliance. His narrative closes with an interesting account of the Yellowknife and Slave Indians and the Chipewyans, which may be taken as supplementary to that contained in Franklin's *Polar Sea*.

Two years after his return from the mouth of the Great Fish River, Back was again sent on an expedition to the shores of the Arctic Sea, the object being to survey the coast between Regent Inlet and Point Turnagain. Back sailed to Hudson Bay, intending to push his way as far as Wager Inlet or Repulse Bay, thence cross overland to Committee Bay and survey the coast west and east. He was beset by ice, however, could not extricate himself for ten months, and then found his ship so disabled that he had much difficulty in sailing her back to England without foundering.

Discoveries of Simpson and Dease

In 1837 two officers of the Hudson's Bay Company, Thomas Simpson and Peter Warren Dease, acting under instructions of the Company, set out from Fort Chipewyan 'to endeavour to complete the discovery and survey of the northern shores of the American continent.' They reached the mouth of the Mackenzie on July 9, and, in spite of fog and ice, were at Franklin's farthest, Return Reef, fourteen days later. Simpson, a man of remarkable energy and resourcefulness, achieved wonderful results under conditions that would have defeated many other Arctic explorers, simply because he refused to recognize any obstacles as insuperable. When the ice-pack drove inshore and blocked the shore channel, instead of turning back or camping till the channel cleared, he turned his boats boldly out to sea and doubled the ice-pack, on one occasion venturing seventeen miles from land. When the ice-field blocked all further progress, he left Dease with the boats, and marched overland, with five men, to Point Barrow, where he connected his discoveries with those of Elson (1826). 'I saw,' says Simpson, 'with indescribable emotions Point Barrow stretching out to the

northward.' He had completed the exploration of the north-western coasts of the continent.

Wintering at Fort Confidence, which they had built on Dease Bay, Great Bear Lake, they set forth again in June 1838, and crossed over to the Coppermine, which they descended to its mouth. Ice conditions here proving very unfavourable, Simpson started eastward along the coast on foot, with seven men, carrying a canvas canoe, arms, tent, and provisions for ten days. He was enabled to reach Cape Alexander, one hundred miles east of Franklin's Turnagain, before his rapidly diminishing stock of provisions forced him to turn back. To the north of Cape Alexander he saw an unknown coast, which he named Victoria Land, and which was really a portion of the same great Arctic island discovered farther to the west by Richardson in 1826, and named by him Wollaston Land.

Again wintering at Fort Confidence, Simpson and Dease descended the Coppermine in June 1839, and, ice conditions being favourable, reached Cape Alexander by boat on July 26. Continuing their journey through hitherto unexplored regions, they reached Back's Point Ogle on August 13, and Montreal Island two days later. Here they found a cache which had been left by Back five years before. Continuing around the coast, they made their farthest point, Castor and Pollux Bay, lat. 68° 28′ N, long. 94° 14′ W. On the homeward voyage they followed the south shore of King William Land, and later explored 146 miles of the south shore of Victoria Land, reaching the mouth of the Coppermine on September 16, 1839, after a record Arctic boat journey of 1408 geographical miles. They were back at Fort Confidence before the end of the month, completing three seasons of successful explorations of the Arctic coast of America. In the west they had filled the gap between Franklin's farthest, Return Reef, and Point Barrow, the most easterly point of the sea expeditions through Bering Strait. In the east they had connected Franklin's Point Turnagain with Back's discoveries around the mouth of the Great Fish, or Backs, River, and the latter with the discoveries of Sir John Ross and his nephew in Boothia Land ; altogether a most remarkable series of explorations. Not the least important result of the work

of Simpson and Dease was the final establishment of the existence of a practicable water channel between the northern coast of the continent and the great Arctic islands.

In the Yukon Region

Turning to the extreme west, it remains to consider several explorations, within the period under review, in the region now constituting Northern British Columbia and the Yukon District. In the year 1824 John Finlay, of the Hudson's Bay Company, crossing the mountains by the Peace River pass, explored the river that now bears his name from the point where it joins with the Parsnip to form the Peace River, to its source in Thutage Lake. Two years later James Douglas, whose name was to be so closely identified with the early history of British Columbia, built Fort Connolly on Bear Lake, at the head of the Skeena River. The river itself was not to be explored for many years. An overland route was afterwards established between Fort Connolly and Fort Simpson on the Mackenzie. In the year 1834 John McLeod, of the Hudson's Bay Company, explored the upper waters of the Liard to Simpson Lake, and the Dease River from its junction with the Liard to Dease Lake, both river and lake being named in honour of Peter Warren Dease. Crossing the height of land, he reached the waters of the Stikine, and descended its banks to the Indian bridge below Thomas Falls. The geographical results of this journey were incorporated in Arrowsmith's map (1850). Two years later an attempt was made to complete the exploration of the Stikine, but it was frustrated by the hostility of the natives. In 1838 Robert Campbell, also an officer of the Hudson's Bay Company, made his way to Dease Lake and built a trading-post, where he wintered. 'We passed,' he says, 'a winter of constant danger from the savage Russian (coast) Indians, and of much suffering from starvation. We were dependent for subsistence on what animals we could catch, and failing that, on *tripe de roche*. We were at one time reduced to such dire straits that we were obliged to eat our parchment windows, and our last meal before abandoning Dease Lake, on May 8, 1839, consisted of the lacing of our snow-shoes.'

VII

A REVIEW OF WESTERN EXPLORATION

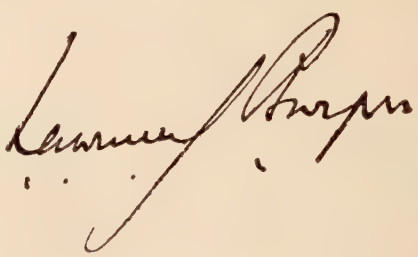
REVIEWING the progress of western exploration from 1763 to 1840, it will be seen that an immense area was added to the map. The half, or wholly, forgotten routes of French explorers were followed to the interior of the continent by adventurous British fur traders, who from the last points reached by their predecessors struck out boldly into the unknown wilderness. These men of the Hudson's Bay and North-West and X Y [1] Companies carried the tide of discovery west to the Pacific and north to the Arctic; they explored the Saskatchewan to the mountains, the Churchill to one of its sources, the Clearwater to the Athabaska, and the Athabaska to the lake of the same name; they descended the Slave River to Great Slave Lake, and explored the Peace River to the Parsnip, and the Parsnip to its source. They discovered several passes through the Rocky Mountains, and followed those mighty rivers of the Pacific slope, the Columbia and Fraser, down to the sea. In the Far North they explored the barren grounds, discovered the Coppermine, Backs River and Great Bear Lake, descended the Mackenzie to the sea, and explored the Arctic coast of the continent, as well as portions of the Arctic islands. The honour of this latter achievement belongs to two different groups of explorers, naval officers sent out by the British Admiralty, and fur traders sent out by the Hudson's Bay Company.

Meantime the fur trade had been carried far and wide throughout the continent, and many hitherto unknown tribes brought within the influence of the white men. The French had come in contact with the Chippewas, Crees and Assiniboines, in what is now Western Canada. British explorers made further acquaintance with these tribes, and also became familiar with the Chipewyans, Yellowknives, Dog-ribs, and other tribes of the Athapascan family, in the

[1] Founded in 1795 by several partners of the North-West Company.

north country; the Blackfeet or Siksika, who occupied the foot-hills of the Rocky Mountains; and the numerous small tribes of the Pacific slope, from the Peace River down to the mouth of the Columbia. It is a significant fact that, with scarcely a single exception, the first white explorers or traders who visited any of these tribes were received with generous hospitality; and it was not until the greed or brutality of individual fur traders had destroyed the confidence of the Indians, that the latter began to repay blow with blow and treachery with treachery.

So far as the fur trade itself is concerned, within the period mentioned it had grown enormously, and had come to control an empire of almost continental proportions. The early rivalries between the two Montreal companies, the North-West and the X Y, had ended in their union in 1804; and the still more bitter rivalry between the Hudson's Bay Company and the North-West Company, culminating in the Seven Oaks affair, in which Governor Semple lost his life, ended in their amalgamation in 1821, under the name of the older company.



INDIAN AFFAIRS

1763-1841

INDIAN AFFAIRS, 1763-1841

I

THE GOVERNMENT AND THE INDIANS

Civilization the Ideal

THE time divisions which are convenient for the larger purposes and scope of this history have no significance for Indian affairs. The administrative changes which occurred in 1763 and 1841 did not affect the Indians in their government, and the date of Confederation serves but to mark the responsibility for Indians then cast upon the Dominion. The year 1830 may be fixed as the limit of the first régime in Indian affairs. Before that date a purely military administration prevailed, the duty of the government being restricted to maintaining the loyalty of the Indian nations to the crown, with almost the sole object of preventing their hostility and of conserving their assistance as allies. About 1830 the government, with the disappearance of the anxieties of the first period, began to perceive the larger humane duties which had arisen with the gradual settlement and pacification of the country. The civilization of the Indian became the ideal; the menace of the tomahawk and the firebrand having disappeared, the apparent duty was to raise him from the debased condition into which he had fallen owing to the loose and pampering policy of former days. Protection from vices which were not his own, and instruction in peaceful occupations, foreign to his natural bent, were to be substituted for necessary generosity. When the Dominion in 1867 gathered up and assumed the responsibility of the colonial governments to the Indians of the provinces this policy was not changed, but a great expansion

in its current occurred, and the development of the new western territories largely increased the burden.

It will be seen that the treatment of the relations of the government to the Indians cannot naturally be broken up into the same periods as the political history, and it has been thought convenient to deal in the first period, from 1763 to 1841, with those subjects which are germane to the military superintendence of the Indians ; in the second period, from 1841 to 1867, with the first attempts to protect, civilize and educate them ; and in the third period, from 1867 to the present time, with the advancement which has taken place among the Indians of the older provinces, the obligations which have arisen with the new political divisions of the country, and with the efforts made to meet them.

French and British Policy Contrasted

The policy of the French crown was, in at least one essential particular, different from that of the British government. French discovery meant conquest so far as the Indian was concerned. Whatever interest was to be shown, whatever favours were to be granted, flowed from the clemency of the crown ; the Indian in himself had no title in the soil demanding recognition, nor, in his inferior position as a savage, had he any rights which could become the subject of treaty or negotiation. When the French standard was set up the Indian passed at once from undisputed possession of his ancestral domain to a mere precarious occupation. His land was parcelled out and patented without his consent; his hunting-grounds were constrained by feudal tenure and customs, without tribal or individual acquiescence. In theory he was not to be treated cruelly or unjustly ; he was, in fact, the object of immense curiosity and of a passionate desire for the welfare of his soul, out of which arose a spiritual conflict which has covered the early Jesuit missionaries with the mantle of heroic martyrdom. Little plots of land were set apart for him, and seigniories were granted that he might be fostered and educated, and, above all, christianized ; but the acknowledgment of any right or title to the soil was absent.

From the earliest times the policy of the British government was marked by an essential contrast. One of the first recorded instructions to British colonial governors, issued by Charles II in 1670, declares the justice that is to be shown to the Indians, and directs that persons be employed to learn their language and that their property be protected. After the enumeration of civil rights came the direction that the governor was to consider how the Indians might be best instructed and invited to the Christian religion. These words were merely the enunciation of a former policy, for earlier in the seventeenth century lands had been ceded with due formalities and for definite considerations, and treaties and agreements had defined the civil relation of the aborigines and the ruler. It was the British policy to acknowledge the Indian title to his vast and idle domain, and to treat for it with much gravity, as if with a sovereign power. According to the doctrine of English law, the lands occupied by the Indians before the Conquest vested thereupon in the British crown, the Indians continuing to occupy under the crown by a sort of precarious title. That title may exist merely as policy, but it has actuated all the British dealings with the Indians; and while it sprang in the seventeenth century from ideals of right and justice, it could be understood and interpreted in the nineteenth by the law lords of the crown in the following words: 'There has been all along vested in the Crown a substantial and paramount estate, underlying the Indian title, which became a *plenum dominium* whenever that title was surrendered or otherwise extinguished.'

Rise of Department of Indian Affairs

The idea that there existed something in the relations of the white man with the Indian which demanded more than casual attention, which in fact required special training and study, is formulated in the instructions of 1670 to which reference has just been made. Persons were to be employed to learn the Indian languages, and from this special class of official intermediary or interpreter rose the separate department of the government which was to be charged with the supervision of Indian affairs, and the oversight by which

traditional policy should be expanded to meet the needs of advancing civilization. In New France the affairs of the Indians were merged in the government of the country; there was no officer or board of commissioners designated to control or influence the conduct of the natives; the missionaries were free agents for evangelization, but had no official standing; and the nerves of policy spreading from the central authority were therefore neither numerous nor sensitive. The British colonial government began early to appoint officers to conduct Indian affairs, the first on record being Arnout Cornelius Veile, a special commissioner to the Five Nations in 1689. Commissioners were appointed in 1696 by the government of New York for the Indian management and control; at first they were four in number, but had increased in 1739 to thirty. Abuses crept in where authority was so diffused, and the hand of a strong man was needed when William Johnson was appointed Indian agent by Clinton in 1744. From that date to the present there runs through the Indian administration a living and developing theory of government.

The policy formulated by this great prototype of all Indian officials has been the foundation of the British control of Indian affairs; varied by changed conditions, it dominates the present administration. In a letter to the Earl of Shelburne, dated January 15, 1767, he thus states his policy:

> We should employ men acquainted with their manners to put forth measures adapted to win upon their affections, to coincide with their genius and dispositions, to discover all their designs, to prevent frauds and injustice, to redress grievances, to remove their jealousies and apprehensions, whilst by annual or other stated congresses, as practised among themselves, we mutually repeat our engagements, refreshing the memories of those who have no other records to trust to—this would soon produce most salutary effects; their apprehensions removed, their attachment to us would acquire a solidity not to be shaken, whilst time, intercourse with us and instruction in religion and learning would create such a change in their manners and sentiments as the present generation might live to see; together with an end to

> the expense and attention which are as yet so indispensably necessary to attain these great purposes and to promote the safety, extend the settlements and increase the commerce of this country.

What Sir William Johnson thought of his charges he may be allowed to state in his own words :

> Now as the Indians who possess these countries are by numbers considerable, by inclination warlike and by disposition covetous (which last has been increased from the customs in which the French have bred them), I find on all hands that they will never be content without possessing the frontier, unless we settle limits with them, and make it worth their while, and without which should they make peace to-morrow they would break the same the first opportunity. . . . I know that many mistakes arise here from erroneous accounts formerly made of Indians ; they have been represented as calling themselves subjects, although the very word would have startled them, had it been ever pronounced by any interpreter. They desire to be considered as Allies and Friends, and such we may make them at a reasonable expense and thereby occupy our outposts, and carry on a trade in safety, until in a few years we shall become so formidable throughout the country as to be able to protect ourselves and abate of that charge ; but until such measures be adopted, I am well convinced, there can be no reliance on a peace with them, and that as interest is the grand tie which will bind them to us, so their desire of plunder will induce them to commit hostilities whenever we neglect them.

This was clearly a policy of necessity. To keep the Indians at bay by friendship, to distrust them profoundly while cementing treaties with them, to heal each treachery with the salve of presents, to be ready with ample rewards for negative services—these were to be the actuating principles until the increase of population should abate the terror of the savage, and the pressure of civilization should turn him into a peaceful subject.

II

SIR WILLIAM JOHNSON AND THE SIX NATIONS

A Great Administrator

WHEN the influence of France disappeared from the northern part of the continent, the system which had been developed by Johnson was extended to the new territory; Quebec became part of the Northern Indian department, and Johnson's successors endeavoured with varied success to imitate and continue his policy. When he found the Northern division of the Indian department enlarged by the conquest of Canada, he appointed deputies for the new territory, and extended his organization to meet the demands of the time. In 1763 he informed the Lords of Trade regarding the Indian population of his department. He enumerated the number of men as follows :—Six Nations, 2030; Indians of Canada in alliance with the Six Nations, 630; Indians of the Ohio, 1100; Indians of the Ottawa Confederacy, 8020. Although he does not compute the total population of all ages and of both sexes, it must have reached 42,000. After the Revolutionary War probably not more than half that number were to be found on British territory; but until after the negotiation of Jay's Treaty, and the transfer of the western posts to the United States government in 1796, they were all under the real or assumed protection of the crown.

Johnson's power over the Indians, beginning first with his influence over the Six Nations, arose from their instinctive perception that he was honest with them, and that his allegiance was no mere pretence in order to subdue or deceive, a perception which was fortified by countless proofs of his disinterestedness. This has been, and we may yet hold it to be, the chief power in British relations with the native races, even though we may point to men who have abused the opportunities given them by this traditional power. In the Six Nations he was dealing with the highest aboriginal type of the northern half of the continent—a people who

had armed their confederacy for peace purposes and who forced peace upon the conquered tribes; a people who had developed a form of government which suited admirably the genius of the race, and which might have developed into something even higher but for the arresting and diverting hand of European civilization.

The Great Confederacy

The Six Nations had not only forced the conquered nations into alliances, but had even imposed upon them many of the peculiar customs of the League. As, therefore, the relations between the government and all the Indian nations were coloured and influenced by the practice of the great Confederacy, it might be well to devote a few words to the outstanding features of their form of government. According to the traditions, before the formation of the League the five aboriginal tribes were hostile to each other, but were brought together and the League constituted by the wisdom of Da-ga-no-we-da, a sage of the Onondaga nation. The character of the League was determined by forms of government already existing among the nations, which must have been of slow growth. Da-ga-no-we-da, the traditional lawgiver, who, by reason of an impediment in his speech, chose Ha-yo-went-ha (Hiawatha) as his speaker, established what had been the practice throughout many years, and gave it form and stability. The supreme power resided in a council of fifty sachems, who bore traditional names and whose positions were hereditary in their several nations. Of these, nine were allotted to the Mohawks, nine to the Oneidas, fourteen to the Onondagas, ten to the Cayugas and eight to the Senecas. They held equal authority, and the sachems of each nation ruled their people as the whole council of sachems ruled the national affairs. Their political edifice was the Long House, erected with its door opening upon the west. In order of precedence the nations stood as follows: the Mohawks, the Onondagas, the Senecas, the Oneidas and the Cayugas. The Tuscaroras, the sixth nation, who were not admitted to the League until 1715, had not an equality with the original five nations, and upon their

entrance no increase was made to the fifty sachems. Later in the history of the League an order of elective chieftainships was formed. Many Indians known to history—Red Jacket, Brant and Cornplanter, for example—were chiefs of the later order ; these subsidiary chiefs never sat as sachems in the order of the League, but in time gained great influence. Each nation was divided into eight tribes, and the tie of consanguinity was powerful between each tribe. A member of the Heron tribe of the Mohawks was brother to the Herons of the Senecas ; or a member of the Beaver tribe of the Cayugas was brother to the Beavers of the Oneidas. 'With the ties of kindred as its principle of union,' to quote from Lewis H. Morgan's *League of the Iroquois*, 'the whole race was interwoven into one great family, composed of tribes in its first subdivisions ; and the tribes themselves, in their subdivisions, composed of parts of many households.'

The stability of the League was ensured by this interweaving of kith and kin, and the permanency and strength of the bond is proved by the constancy of the League as a whole to the British side in the Revolutionary War. The Oneidas and Tuscaroras alone openly favoured the Americans, and even they were always wavering, always being influenced by the spirit of old times and old customs. A more serious division in the ranks of the Six Nations would have meant for them a desperate civil war, involving every warrior in the guilt of his brother's blood.

Descent was fixed in the female line, and thus it was assured that the sachems would be of the same tribe as the original holders of the position. A survival of the days when the woman was wife to all members of the tribe of which her husband was a member—this was the only way of securing purity of descent. The son of a marriage was not the son of his father but of his mother ; he could inherit from his sire neither honours not property. If his father were a sachem, the office was open only to choice from among the descendants of his father's brothers or sisters.

In their great councils, which could only be summoned by the Onondagas, who were the guardians of the council fire, business was conducted with high formality, and absolute

unanimity was necessary to the decision of any question. The unanimity was assisted and almost assured by a system of concurrence between sachems of the same class. Each department of the national life, and every relation of family intercourse, was woven through with subtle bonds and filaments of association. It is not necessary to pursue the subject deeper into its labyrinths; enough has been said to make clear the nature of these master Indians who so long troubled the British with their intrigue and strategy.

Johnson entered into the spirit of their policy, used their imagery, spoke to them perpetually in Wampum, and kept the council fire fed with wood that made the brightest and warmest flame. In 1763 the Indians of the newly created government of Quebec, and the Indians of the West, saw his name signed to the proclamation of that year, which gave them a strong protection and an acknowledged title to their lands; and they might feel, indeed, to use the figurative language of the council fire, that a tree had been set up whose branches were large enough to afford shelter for them and all their brethren to come and consult under it.

Indian Rights Guarded

It is a comment on the importance of the Indian question in those days that at least one-third of the Proclamation of 1763 should have been devoted to defining the protection to be accorded to the Indians and their property and trade. After the four new governments of Quebec, East and West Florida and Granada had been erected and their administration provided for, the proclamation turns to the Indians:

> And where it is just and reasonable and essential to our interest and the security of our colonies that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our domains and territories as not having been ceded to us are reserved to them or any of them as their hunting grounds.

So runs the preamble, followed by instructions to the governors that no warrants of survey or land-patents are to

be granted beyond the bounds of their districts. All the land except that granted to the Hudson's Bay Company, and also all the land to the west of the head-waters of rivers 'which fall into the sea from the West or North-West,' were reserved for the Indians. No purchase or settlement was to be allowed, and all squatters were to remove from these unceded lands. No private person was to presume to negotiate a land-purchase from the Indians, but 'if at any time any of the said Indians should be inclined to dispose of the said lands the same shall be purchased only for us, in our name, at some public meeting or assembly of the said Indians to be held for that purpose by the governor or commander-in-chief of our colony.'

Trade with the Indians was to be free; but the prospective trader had to take out a licence, and he was to give security that he would observe all regulations imposed from time to time. Five years after the date of this proclamation, at Fort Stanwix, the great treaty was signed which determined, for the time being, the western boundaries of the colonies and defined the vast unpurchased Indian domain lying farther west. The treaty grew out of the proclamation; Johnson negotiated the one, his influence can be traced throughout the wording of the other, and his strong will dominated affairs even after his death and well into the first decades of the nineteenth century. It was by his methods that the Indians were controlled during the Revolutionary War, and amid the uncertainties of the eleven years from 1783 to 1794 between the signing of the Treaty of Paris and the signing of Jay's Treaty.

The outstanding events in which the Indians played an important part during these troubled times were the Revolutionary War, the peaceful settlement of the Mohawks on the Grand River in Upper Canada, and the contrasting hostilities surrounding the Indian claims to the western country.

In order to understand the position of the Indians after the close of the Revolutionary War, when they were rolled back upon Canada, it will be necessary to glance briefly at the events between the years 1774 and 1783. Throughout the spring and early summer of 1774 the strained relations

existing between the American colonists and the government caused the Indians much uneasiness. They had been approached by emissaries who attempted to educate them in the rebel politics, and Johnson was active in allaying their fears. The burdens of such unrest as preceded the cataclysm were too great to be borne by a man already enfeebled, and Sir William died suddenly on July 11, 1774, immediately after an important conference with the Six Nations. His death threw the Indians into a panic, and if it had not been for Johnson's foresight the results might have been serious. He had recommended as his successor Colonel Guy Johnson, his nephew and son-in-law, who at once took up the reins of government, and was later confirmed in office.

III

THE INDIANS AND THE WAR OF THE REVOLUTION

Attached to the British

THE intrigues for the neutrality or active sympathy of the Indians continued, but more openly. Early in the year 1775 the revolutionary party had begun a correspondence with the Six Nations through their missionary, the Rev. Samuel Kirkland, who had great influence over them. Colonel Johnson endeavoured to have him removed from his station, but the Indians objected. They found their best friends on opposite sides; and shortly after their effort on behalf of the disloyal clergyman they had to intervene on behalf of their loyal superintendent, and protest to the Tryon County Committee against any restriction upon his liberty. 'The love we have for the memory of Sir William Johnson,' they urged, 'and the obligations the whole Six Nations are under to him must make us regard and protect every branch of his family.'

Underlying the protestations of both sides that their efforts were directed solely toward maintaining the Indian neutrality, there must have been the hope that the neutrality

would pass, and that active armed support would ensue. Colonel Johnson, finding that all necessaries for the Indians were stopped by order of the committees, left his headquarters in May 1775, proceeded to Oswego and thence to Montreal, holding councils on the way with the Indians. He was accompanied by Joseph Brant and by a large body of Mohawks, who never again returned peacefully to their old homes. At the same time the Continental party were not idle, and won the friendship of the Oneidas and Tuscaroras; but during the war they wavered, and even these nations were scattered between the two camps. In 1780 Colonel Johnson reported that the major part of the disaffected tribes had returned to their allegiance. The first occasion on which the Indians took part in the hostilities was at St Johns, in the summer and autumn of 1775; the Mississagas were there actively associated with the Indians of the St Lawrence. But Governor Carleton would not allow them to cross the frontier, or, to quote his own language, 'to let them loose on the rebel provinces lest cruelties might have been committed and for fear the innocent might have suffered with the guilty.'

Gradually the separation of the nations from their ancestral domains was accomplished. Sir John Johnson, with certain of the Six Nations who had not joined Colonel Guy Johnson and Brant, fled to Canada in 1776; and the great council fire tended by the Onondagas since the formation of the League was extinguished. The council at which the Six Nations were finally persuaded actively to support the British by promises of reward and protection, and by a liberal supply of presents, was held at Oswego in the summer of 1777. Colonel John Butler was there with Captain Caldwell and Brant; and then began a lurid chapter of warfare in the Indian manner, with episodes of flame and the torture stake.

It would be unprofitable to trace events with minuteness. It is doubtful if the Indian allegiance was of any real benefit to the British. Neutrality, if it could have been obtained, would have been a jewel of price to both sides; but Britain gained the costly prize of a savage ally. The Indians were at all times moody and fickle fighters, eager to be purchased

every season with a new supply of merchandise, and quick to imagine slights and insults. There was ever present the fear of their treachery—the fear that some last offer from the Americans, such as was constantly being made, might please their whim ; even Lafayette in 1778 addressed himself to the task of winning the Canadian Indians. Guy Johnson gives this detailed list of their exploits in the campaign of 1780 : 'They have killed and taken 14 rebel officers and 316 men, and destroyed 714 houses and granaries full of grain, with 680 head of horses and cattle, 6 small forts and several mills.'

The close of the war found the powerful Confederacy crowded about Niagara. Their exploits had not been of a nature to bring them wealth or even means of subsistence, and they were pensioners on the bounty of Great Britain. Indians are never slow in making demands, and a promise sinks into their minds and becomes as perdurable as an index of brass. The Six Nations had been promised by Carleton, and the pledge had been renewed by Haldimand, that they should be placed in as favourable a situation at the close of the war as they enjoyed in their former 'castles.' They remembered and urged the fulfilment of this promise, and pressed for the payment of their losses. Great Britain paid these at their own valuation of £15,000 (New York currency), and she purchased for them from the Mississagas for £2000 a fertile tract extending down the Grand River from its source to its mouth. A portion of the Mohawks settled at the Bay of Quinte under the chief Deserontya, whose name is preserved in Deseronto, the name of a town near the reserve. The Six Nations still reside near Brantford upon the 49,696 acres which remain of their grant, the greater portion having been sold for their benefit, and keep up a lively semblance of their traditional form of government.

The treatment of the Six Nations and other friendly tribes on British territory after the close of the war was a matter merely of spending money and giving lands, but the Indian problems arising from the Treaty of Paris were more difficult and dangerous. The Indians who considered themselves the allies of Great Britain, bound to suffer or profit

with her, expected that they would be named in the Treaty of Paris, and that their old treaties would be confirmed and respected. General Haldimand, writing to Lord North in November 1783, told him that the Indians had as enlightened ideas of the nature and obligations of treaties as most civilized nations, and knew that no infringement of the treaty of 1768 fixing boundaries between their country and the North American provinces could be binding without their consent. When those residing in the newly formed republic realized that they were at the mercy of the Americans, their surprise was equalled only by their scorn. They had been neglected by the power whose understanding of the sacredness of treaties they had imagined to be as pure and lofty as their own. They never ceased to advance and support their claims by clear and simple reasoning until their voice was hushed in defeat; and, having proved by this appeal to arms the justice of their contention, the right for ever remains on their side. They were capable of urging their case in such straightforward language as follows:

> The King surely would not pretend to give the Americans that which was not his to give; and would not believe that the Americans would accept that which the King had not power to give. They were allies of the King, not subjects, and would not submit to such treatment. They had given the French King right to establish posts along the waterway between Canada and the Western Indians in the heart of their country, for trading purposes only, no land, and after the war [*i.e.* Pontiac's war] granted to Sir William Johnson to hold these forts for their ally the King, but this gave the King no right to grant these lands to the Americans. They would look for favours from neither, nor would they be aggressors, but would defend their own. If England had done so it was an act of cruelty and injustice and capable only of *Christians*.

They afterwards came to know, from the acknowledgment by the Americans, that they possessed the right to their unceded lands, that Great Britain had not given away their country at the peace; as Governor Simcoe expressed it, 'the only rights in the Indian Territories resigned by the

King to the United States were those against the nations of Europe.'

After the Treaty of Paris, if England could have handed over the western country to the United States, she would have been in no way concerned with what was purely an American question. Unfortunately for the Indians, their lands had become the property of the conquerors, and their title depended upon the view which their masters would take of old treaties and new duties. Great Britain could not actually interpose; she could only mediate, and was all the time strongly compromised in a way which gave her less power over the Indians than she might have had under other conditions. For during all this time that the conflict raged around the Indian boundaries, the British flag waved over forts and posts far within the American territory as defined by the treaty. Clauses V and VI provided for the restitution of the losses of the loyalists and the cessation of reprisals on the loyalists remaining in the United States. These clauses had not been respected, and to enforce them Great Britain had withheld the transfer of the western posts. So long as this semblance of suzerainty was maintained, the Indians felt that they could claim some protection, or at least advice, from their old ally. Brant's name was as yet a tower of strength, and they looked to him as a mediator. The Treaty of Fort Stanwix, consummated by their old friend Sir William Johnson in 1768, fixed the Ohio as the western boundary of the colonies; beyond that river the lands yet remained unceded to the white man. All that the British could do after the peace to preserve the Indians' title was to endeavour to assist in establishing a great belt of neutral Indian territory between the Ohio and the Mississippi and the borders of Canada.

Indians Hostile to the United States

But the active hostilities of the Indians on the frontier hampered the American settlements, and General St Clair was sent to crush the rebels, only to be himself defeated in November 1791. During the following year efforts were made to settle the question peacefully. Brant made a visit

to Philadelphia, and a grand council was arranged between the representatives of the United States and the Indians for the spring of 1793. Meanwhile the Indians themselves held counsel together, and listened with contempt to the Six Nations' chiefs, who were taunted with having 'the voice of the United States folded under their arm.' A preliminary council was held in Freemasons' Hall one Sunday morning in July 1793. Three commissioners from the United States were present, with Governor Simcoe, several Quakers and others who were anxiously promoting a peaceful settlement. Brant was the spokesman of the Confederates, and his party wished him to ask whether the commission had the power to fix the Ohio as the boundary. Ignoring the reference to the Ohio, he merely asked whether they were empowered to fix the boundary. The answer was in the affirmative, but if Brant had gained time he had lost all influence with the Confederate Indians and weakened the confidence of the British.

More than a month afterwards, near Detroit, to which point the commissioners had proceeded, the question was decided. The Indians, filled with suspicion, refused to receive the commissioners again, and sent an abrupt refusal to consider any terms but their own. They claimed the Ohio as the boundary; Brant and the Six Nations were willing to accept the restricted boundary of the Ohio and the Muskingum, but the commissioners could agree with neither. The negotiations were broken off, the Indians complaining to Simcoe that the Americans insisted on taking the whole of their country, and offered money, which was useless to them, in payment.

General Wayne, who had organized an expedition against the Indians after the defeat of St Clair, pressed still farther into their territory, and his advances were considered a menace to the safety of the British posts. Both Lord Dorchester and Governor Simcoe considered that the country was on the eve of war, and prepared for it. But Wayne contented himself with crushing the Indians, which he did on August 20, 1795, and, under the terms of Jay's Treaty, Great Britain retired from the debatable ground and from

the western Indian problem. Once more, however, she showed her generosity to the Indians by purchasing from the Chippewas of the River Thames a tract of land for the western Indians, who, it was supposed, would settle there to the number of three thousand, and many of whom eventually moved to Canada. These events disrupted the close connection of the Indians of Canada with the western nations; but we shall realize again that the old heat had not died out of the embers of the council fire when we see Tecumseh appearing out of the West to assist the British in the War of 1812. It was even years after that—in fact, not until the British restricted the issue of presents to their own Indians—that the bond of the old fealty was finally severed.

British Diplomacy

It is somewhat difficult to trace the course of British diplomacy throughout the tangle of this Indian territorial dispute, involved, as it was, with the larger question of treaty obligations and the sovereignty of the West. American writers have charged the British with bad faith and a desire to foment the Indian troubles; they point to an active interest manifested by the issue of ammunition and supplies. It would be easy to exculpate and defend the British if the responsibility for all orders, and all obedience to orders, lay in one direct channel from the source onwards. But the separation between the executive government and the Indian department, which gave rise to much protest, was in large measure chargeable with the misunderstandings which made the action of the British open to suspicion. It must be granted that in negotiations with the Indians much that is important is often concealed. It is not always the gentleman commissioner with gold lace on his coat who is master of the situation; some obscure parson, trader, or adventurer is often the real pilot of events. There is a phrase full of meaning which appears in the old records: 'The council fire was now covered up.' When the council fire was thus 'covered up' many other unofficial blazes were kindled either for bane or benefit. The remoteness of the posts, the time which passed between the dispatch of reports and the receipt

of orders, tended to make a consistent administration more difficult. Tribute is due to such Indian officials as McKee, Claus and Elliot for the fact that it was, in all essentials, successful. During the years of strife after 1783 ammunition and other presents were constantly and periodically issued to the Indians. These were for subsistence only, and were given as by a grand almoner to pensioners; to withdraw them would have meant inconceivable hardship to the recipient and a lasting disgrace to the dispensing power. It is safe to take the British diplomacy at its face value, and goodwill and a desire to settle the Indian question peacefully are written plainly upon it. At the same time, there is evident the desire to safeguard His Majesty's interests in Upper Canada. For a long period, in fact until after the War of 1812, a certain fear of the Indian runs through the dispatches from Upper Canada.

There is no doubt that the administration of the Indian department was open to criticism. In 1795 Governor Simcoe arraigned the policy which separated the department in his province from the executive; the department was, he averred, unpopular by reason of charges of peculation, and 'from belief that the officers foment ill-will between the Indians and the United States.' He states: 'I therefore, if it shall continue on its present independent footing, declare that I consider the power and authority of my station, requisite for the good government and internal welfare of the Province of Upper Canada, to be materially weakened.' His appeal to the governor-general that the evil be remedied was effective, and in 1796 the lieutenant-governor of Upper Canada was given control of Indian affairs in his province.

Joseph Brant

So long as the Indians were in the majority and under separate control, the difficulties of administering the government, particularly in the department of criminal justice, were great. The incident of the murder of Lowell by Isaac Brant, one of Joseph Brant's sons, is a case in point. Governor Simcoe was prepared to demand the surrender of the murderer; if met by refusal, he had decided to support the civil power

with the whole military force of the country, and he had begun preparations. The fear was that the execution or punishment of a brave would bring the Indians into conflict with the settlers. In the case cited Isaac died from a wound inflicted by his father in self-defence; and Brant, showing his people an example of obedience to the law, gave himself up to the authorities, and was acquitted of any criminal responsibility for his son's death.

The scroll of this uneasy period cannot be rolled up without a more distinct reference to Joseph Brant, the master Indian of the time. He was not a sachem of his nation, but only one of those elected chiefs of whom mention has been made; yet he succeeded by his native force in placing himself at the head of the Confederacy, the acknowledged arbiter between civilized governments and the savage forces which opposed them. He was fortunate in his early training in the school of Sir William Johnson, being domesticated in his house by reason of the relations which existed between his sister Molly and the baronet. He was educated; he wrote English in a rugged style, and translated portions of the Scriptures and the Prayer Book into Mohawk. But his acquirement was less remarkable than his native endowment. Shrewder, more cunning and deeper than any other Mohawk, he had also a breadth of mind and a capacity for assimilating the genius of European thought and politics. His intellectual vigour impressed great men of various minds, and he played his part well, until, as it would seem, he became confused amid the greatness of the contending forces, and accepted, with the defeat of the policy of the western Indians, his dwarfed position as the head of a disrupted league composed of dissatisfied and truculent individuals. Yet even in this position one must recognize his worth, and record that he worked diligently for his people. Altruism is absent from the Indian character; yet Brant's last words were for his race: 'Have pity upon the poor Indians; if you can get any influence with the great, endeavour to do them all the good you can.'

IV

THE INDIANS AND THE WAR OF 1812

Tecumseh, a Great War Chief

ALTHOUGH the general history of the War of 1812 does not come within the purview of this chapter, certain space must be given to the share which the Indians took in the defence of Upper and Lower Canada. In one particular the part they played was unique and final, as the western Indians, who had never ceased their hatred of the United States, appear for the last time as allies of the British. Tecumseh, the great chief of the Shawnees, is the heroic Indian figure of this war. His steadfast adherence to the policy of an alliance with Great Britain, when many of his own and his confederate people were opposed to his diplomacy, and his death for his adopted cause, will always surround his fame with a lustre of romance. He was born in 1768, the year of the great Treaty of Fort Stanwix, and he had taken part as a young man in the turbulent times between 1783 and 1796. The Indians had observed the tone of hostility which the Americans had adopted toward the British, and it had thrown them into a state of feverish unrest. On November 7, 1811, in the absence of Tecumseh, they had attacked General Harrison and had inflicted upon him considerable loss. Harrison followed them up only to find the deserted village of Tippecanoe, which he destroyed. Tecumseh, when he returned in January 1812 from his mission to the Creeks in the south, found the desolate site of the once prosperous village.

On December 3, 1811, General Brock writes in a letter to Governor Craig:

> My first care, on my arrival in this province, was to direct the officers of the Indian Department at Amherstburg to exert their whole influence with the Indians to prevent the attack, which I understood a few tribes meditated against the American frontier. But

> their efforts proved fruitless, as such was the infatuation of the Indians, that they refused to listen to advice; and they are now so deeply engaged that I despair of being able to withdraw them from the contest in time to avert their destruction. A high degree of fanaticism, which has been for years working in their minds, has led to the present event.

He reports again: 'The Indians felt that they had been sacrificed in 1794, they are eager to avenge their injuries.' Suasion and advice were of no avail; Tecumseh with over a thousand of his warriors crossed the frontier into Upper Canada, and met General Brock in August of 1812. Brock thus describes his fellow-warrior:

> He who most attracted my attention was the Shawanee chief, Tecumseh, who for the last two years has carried on, contrary to our remonstrances, an active warfare against the United States. A more sagacious or more gallant warrior does not, I believe, exist. He was the admiration of every one who conversed with him. From a life of dissipation, he has not only become in every respect abstemious, but he has likewise prevailed on all his nation, and many of the other tribes, to follow his example.

Able Allies on Many Fields

The defection of Tecumseh drew from the Americans the most violent threats of extermination, which were even extended to include those white soldiers who might be captured fighting side by side with the Indians. But the Indians fought throughout the war, in their fashion, supporting the regular troops and the militia; and their share in the victories and defeats of the campaigns was marked with but one act of treachery, the massacre of some American prisoners after the affair at Frenchtown. They were present at every important engagement—at the capture of Detroit, at Queenston Heights, at the defences of York and Fort George, at the Thames, at Beaver Dam and Lundy's Lane, with de Salaberry at Chateauguay, and with Morrison's column at Chrystler's Farm. Not a few Indians were lost in the British cause,

including Tecumseh, who was shot at the battle of the Thames, and whose burial-place is shrouded in mystery. In the Treaty of Ghent, which closed the war, the Indians were not forgotten. Brock had pleaded their cause before his death, and had urged that in any negotiations for peace they should not be 'exposed to the unrelenting fury of their enemies.' Clause IX of the treaty read as follows: 'Hostilities to cease with the Indian tribes; all the possessions, rights and privileges enjoyed by them previous to 1811 to be restored.' The losses of the Indians during this war amounted to £4750; the claims were paid by the government.

On August 8, 1814, a general order was issued stating that the commander of the forces had approved of a plan for the organization of a body of Indian warriors, to act together in the field under a superintendent as colonel, and to consist of four companies from Caughnawaga, the Lake of Two Mountains, St Regis, St Francis, Bécancour and Three Rivers. The officers of this corps received the same pay as officers of corresponding rank in the regular army. The corps served until July 24, 1815, when it was disbanded.

During the rebellion of 1837-38 the Indians remained loyal, and in one instance rendered invaluable service to the government. On November 4, 1838, an attempt was made by a body of the insurgents to surprise the Caughnawaga Indians. It was Sunday, and the Indians, who were in church, were warned by a squaw of the intended attack. They defeated their antagonists and took seventy prisoners, whom they handed over to the authorities in Montreal the next day. Their gallant conduct was made the subject of a commendatory dispatch from Lord Glenelg to Sir John Colborne, dated January 26, 1839.

V

LOYAL WARDS OF THE CROWN

Indian Reserves in Canada

WITH the gradual settlement of the Indians in the province of Upper Canada, the administration of Indian lands grew to be the most important question with which the government had to deal. The land question had two main divisions—the unceded lands and the reserved lands. In the lower province the crown simply maintained the state of affairs existing before the Conquest. There were no unceded lands in Lower Canada. There the Indians were found settled upon reserves which had been granted either to missionaries for the purpose of evangelizing the Indians, or to the Indians themselves by the crown or private persons. Some of these titles are of ancient date. The reserve at Caughnawaga was granted in 1680 to the Jesuits for the Mohawks whom they had converted, and who had occupied an older Caughnawaga in the Mohawk Valley. In the year 1762 this reserve was withdrawn from the management of the Jesuit Order, and the fee simple was retained by the crown for the benefit of the Indians. Another reserve, that of the Abnakis of St Francis, was donated by Dame Crevier to be held as a reserve so long as a Jesuit missionary was there maintained. In the upper province, when the Constitutional Act of 1791 became operative, vast areas of land were in possession of the Indians. The purchase of the tract from the Mississagas for the Mohawks was an early application of the principle of the Proclamation of 1763, and no sooner had Governor Simcoe seated himself in his province than he began to extinguish the Indian interest in the lands, and place the Indians upon reserves set apart as their own peculiar estate, inalienable without their consent. Large parts of Upper Canada were thus relieved of the burden of the Indian title before 1841. The consideration was usually an annuity and sometimes a direct purchase. The more important cessions were as follows :

CHIEF SURRENDERS OF INDIAN LANDS IN UPPER CANADA BY THE TRIBES MENTIONED, SHOWING AREA SURRENDERED, LOCATION, AND THE CONSIDERATION THEREFOR.

Date of Surrender.	Area.	Location of Surrenders described by Counties.	Consideration.
OTTAWAS, CHIPPEWAS, POTTAWATAMIES AND HURONS			
	Acres		£ s. d.
May 19, 1790	2,000,000	Portions of Essex, Kent, Middlesex and Elgin Counties	1200 0 0
CHIPPEWAS			
May 22, 1798	28,000	Portion of Simcoe County . . .	101 0 0
Sept. 7, 1796	132,000	Portions of Middlesex and Oxford Counties	1200 0 0
Sept. 7, 1796	88,000	Portion of Lambton County . . .	800 0 0
June 30, 1798	——	Island of St Joseph	1200 0 0
Nov. 17, 1815	250,000	Portion of Simcoe County . . .	4000 0 0
Oct. 17, 1818	1,592,000	Portion of Dufferin, Grey and Simcoe Counties	1200 0 0 (Annuity)
Nov. 5, 1818	1,951,000	Peterborough and Victoria Counties, portions of Northumberland, Durham, Ontario, Haliburton and Hastings Counties, and District of Muskoka	740 0 0 (Annuity)
July 8, 1822	580,000	Portions of Lambton, Kent and Middlesex Counties	600 0 0 (Annuity)
July 10, 1827	2,200,000	Portions of Lambton, Middlesex, Oxford, Perth, Wellington, Waterloo and Huron Counties	1100 0 0 (Annuity)
Aug. 9, 1836	1,500,000	Portions of Bruce, Grey, Wellington and Huron Counties	1250 0 0 (Annuity)
MISSISSAGAS			
Dec. 7, 1792	3,000,000	Norfolk, Haldimand, Brant and Wentworth Counties, and portions of Wellington, Oxford, Elgin, Welland, Waterloo and Lincoln Counties	1180 7 4 (Annuity)
Aug. 21, 1797	3,450	Portion of Halton County . . .	75 2 6
Aug. 1, 1805	250,850	Portion of York County. . . .	0 10 0
Sept. 6, 1806	85,000	Portions of Halton and Peel Counties .	1000 0 0
Oct. 28, 1818	648,000	Portions of Peel, Halton, Wellington and Dufferin Counties	522 10 0 (Annuity)
Feb. 28, 1820	2,000	Portion of Peel County	50 0 0
Nov. 28, 1822	2,748,000	Portions of Hastings, Addington, Frontenac, Lanark, Carleton and Renfrew Counties	642 10 0 (Annuity)
MOHAWKS OF THE BAY OF QUINTE			
July 20, 1820	33,280	Township of Tyendinaga . . .	450 0 0 (Annuity)
MORAVIANS OF THE THAMES			
Oct. 25, 1836	26,000	Township of Zone	150 0 0 (Annuity)

The reserved lands began also to be surrendered to the crown for sale, the proceeds to be invested for the benefit of the Indian owners. The Mohawks at an early date began to sell and lease portions of the Grand River tract. The Mississagas surrendered their reserves at the River Credit, and in 1841 the Indian Trust Fund accumulated from these land sales amounted to £8321.

Early Condition of the Indians

Early Indian legislation was confined to the regulation of the fur trade and the suppression of the traffic in intoxicants. During the French régime ordinances provided these regulations, and also prohibited the purchase of Indian clothing and protected the cultivated lands of the natives from encroachment. After the Conquest, and until the Indians found themselves a distinct factor in a developed settlement and society, British legislation was of a like character. Before 1791 a few simple ordinances derivative from the Proclamation of 1763 will be found. Between 1791 and 1841 a little elaboration on the old theme is noticeable with the introduction of a new note, a recognition that the Indian who gained his subsistence by the chase should not be subject to the game laws. Special enactments gradually appeared on the statute book, as necessity arose, to provide for the peculiar position of a people who were wards in some of their relations to the government, yet at the same time free citizens of a free country. In these early days they were savages living an aboriginal life with some rough acquirements of civilization. In Upper Canada they lived until nearly the middle of the nineteenth century in their wigwams. The Six Nations were hut-builders, but their huts, if as sanitary, were little better than the wigwams. In Lower Canada the Indians had learned the benefit of permanent shelters, and were housed for the most part, though in a rudimentary way.

The plentiful supply of fish and game gave them a staple food-supply, and they were a well-nourished race capable of great endurance. They had cultivated and improved the maize, of which there were several varieties. It was used in

many forms : green, it was boiled, roasted, or made into loaf-bread ; dried, it was made into cake, soups and puddings, with and without meat. They also cultivated beans and squashes, and used lichens, mushrooms and fungi, with berries, nuts and edible roots. They made sugar from the maple sap, and their diet was varied and nutritious. Their domestic utensils had been gradually improved to meet their primitive needs. They had invented the bark canoe and the snow-shoe. Before they had tasted the fierce liquor imported by the white man their condition was one of plenty. The improvidence with which they are usually charged was not an ancient characteristic, as they used granaries and storehouses, and husbanded their resources. But rum was let loose on them like a scourge, and destroyed them. Despite the restriction on the traffic, traders bartered liquor for furs, and the final price that would purchase anything and everything was a keg of rum or hollands. It was not until the trade in intoxicants was made absolutely illegal that the Indian began to recover a little of his ancient dignity and independence.

From the close of the Revolutionary War until nearly the middle of the nineteenth century the Indian government was conducted by means of a constant appeal to self-interest ; amity was promoted by a system of gifts which became in the end degrading. The simple primitive interchange of tokens of friendship between the early discoverers and the chiefs had become so debased that it was a source of peculation to the whites and debauchery to the natives. But consideration of the question of Indian presents may well be deferred until recording the reasons which led to their abolishment, when there will be opportunity for a perspicuous review of the subject.

Religious Instruction and Education

In a word, during the period under consideration the Indians were still savages ; and although some effort had been made to christianize and educate, it had left the temper and dis-

position of the tribes unregenerate. The Jesuit missionaries had laboured in New France, and their self-sacrifice had influenced the outward demeanour of the savage, and made him a participant in the exercises of religion. In the British colonies matters were not so advanced. Johnson expressed the fear in 1763 that no such persons as the Jesuits would be found amongst the clergy. The British colonists' greed for land had greatly destroyed the influence of their missionaries with the Indians, and the Mohawks had lately told Johnson 'that they apprehended the reason they had not clergy as formerly amongst them was because they had no more land to spare.' Portions of the Scriptures and the whole of the Prayer Book had been translated into Iroquois, and there were in the Mohawk and Oneida nations little centres of Christianity.

When the settlement of Upper Canada began, greater attention was at first paid to the religious instruction and education of the Indian than to like service for the white population. The first school in the province was for the Mohawks, who settled on the shores of the Bay of Quinte; the first church erected was on the Grand River reservation of the Mohawks. Missionaries of the Gospel were active in the villages of the Chippewas and Mississagas, and several Indians became prominent in the civil life of the province. John Brant, the son of chief Joseph Brant, was in 1832 elected a member of the provincial parliament. The county of Haldimand extended over the grant to the Mohawks. Brant had been elected to represent this county by the votes of persons who held their property under leases granted by his father, and the courts had decided that the title in fee simple was not held by the Indians. Brant's opponent, Colonel Warren, contested the election, and he was unseated; but he was worthy both by natural gifts and education of the honour the people had paid him.

VI

CONDUCT OF THE INDIAN DEPARTMENT

The Johnson Tradition

IN the constitution of the Indian department few changes were made during the years between 1763 and 1830. Until the death of Sir John Johnson in 1830 the department was governed by the Johnson tradition.

After Sir William Johnson's death Colonel Guy Johnson was appointed to his office temporarily by General Thomas Gage, and afterwards permanently on September 8, 1774. He held the position until February 1782, when he was suspended owing to irregularities in the department. Upon reorganization Sir John Johnson, Sir William's son, was appointed by royal commission on March 14, 1782, superintendent-general and inspector-general, and continued to administer until June 25, 1828, when the office was abolished and his name was placed upon the pension list.

A deputy superintendent-general had been appointed in 1794 in the person of Colonel Alexander McKee. Both these titles and offices survive under the Federal government, the major being a minister of the crown, and the minor the deputy minister of the department of Indian Affairs. When Colonel McKee died on January 15, 1799, a controversy arose over the appointment of his successor, owing to a dispute as to whether the patronage of the department was under civil or military control. The Duke of Kent, as commander-in-chief, appointed Colonel John Connolly; Lieutenant-Governor Hunter promoted Captain William Claus, informing the Duke of Portland that he would not recognize Colonel Connolly; he also wrote to the Duke of Kent that the removal of Captain Claus would he highly prejudicial to His Majesty's service. Upon these representations, the Duke of York ordered the cancellation of Colonel Connolly's appointment. Captain Claus was promoted to the rank of colonel, and served until his death in November 1826. Inspector-General Darling succeeded him, and when the office

of superintendent-general was abolished in 1828, and the administration devolved upon a chief superintendent, he was the first occupant of that office. His headquarters were at Montreal, and his salary was six hundred pounds.

Changing Policies

A general order of August 13, 1816, directed, by command of the secretary of state for the Colonies, that the superintendence and chief control of the Indian department and of all Indian affairs be transferred to the military commander of the North-West provinces. Thereafter the administration was military in character; the officers had military rank, and were entitled to wear a uniform which was established by order in 1823. It consisted of a jacket of olive-green cloth, made in the same manner as those worn by the infantry regiments of the line, with gold lace round the collar and cuffs, and gilt buttons with the crown and name of the department upon them; waistcoat and pantaloons of the same colour; a common round hat with cockade and button; and a waist-belt and sabre — the superintendent-general and deputy superintendent-general, only, to wear a gold epaulette on each shoulder. Until 1832 they were paid from the military chest provided for the use of the Army Extraordinaries; after that date from the imperial grant for the Indian department. Their duties have been described as consisting of 'conveying the presents to the Indians and attending at the different stations where they assembled to receive them with as much military pomp and display as the occasion would admit.'

In 1830, when Sir George Murray was secretary of state for the Colonies, an end was made of the exclusively military character of the administration. It was divided territorially into departments for Upper and Lower Canada. The former was controlled by the lieutenant-governor, at that time Sir John Colborne, with Colonel James Givens as chief superintendent; the latter, by the military secretary of the governor-general at Quebec, then Lieutenant-Colonel Cooper. Lieutenant-Colonel D. C. Napier was secretary of Indian Affairs for Lower Canada, with the pay of a chief superintendent.

This organization continued until after the formation of the Province of Canada, and subsequent modifications and changes will be referred to in their proper sequence.

During the long period of seventy-eight years, from 1763 to 1841, which is now under review, the crown, from a wise view of the situation, retained the management of the Indians. The policy which centred the control of the Indians in the only power free from local prejudice is easily comprehended. In the early days the Indians were either feared as foes or valued as allies; and as their chief importance was military their government, it was wisely felt, was safe in the hands of those who must control them in the field. When the immediate fear of war faded away, the prudence of continuing unabated the care with which old treaties and traditions were honoured and preserved, and the sheer necessity of protecting the Indian estate from the rapacity of land-grabbers and speculators, led to the survival of the dominance of the governor-general over the Indians and their affairs long after the colonial ministry was responsible for the general government.

When in 1830 the secretary of state for the Colonies terminated the existence of what may be called the military Indian department he made more than a mere change and improvement in administrative methods. The Indian officers were no longer to be solely purveyors of presents or almoners of the crown grants; they were to be transformed into the executants of a humane and progressive plan for the civilization of the aborigines. Sir George Murray announced as the policy of the government 'the settled purpose of gradually reclaiming the Indians from a state of barbarism, and introducing amongst them the industrious and peaceful habits of civilized life.'

The years which had passed between 1796 and 1830 had made possible such a change of policy. At the latter date the majority of the western Indians had elected to which of the two governments they were to own allegiance.

The years ensuing between 1841 and 1867 will show the inception and development of many new ideas in Indian policy, the beginnings of a generous scheme of education, a

still wider application of the principle of purchase of land-rights, and the gradual evolution of the legal status of the wards of the crown. Details of the later progress will be recorded in dealing with the relations of the provinces of Canada, Nova Scotia, New Brunswick and Prince Edward Island with the Indians.

Duncan C Scott

THE POST OFFICE

1763-1841

THE POST OFFICE, 1763-1841

I

EARLY IMPERIAL CONTROL

The Beginnings of Mail Service

WHEN Canada fell into the hands of Great Britain there was in North America a postal system connecting all the older British colonies with one another, and attached to the postal system of the mother country by a line of sailing packets. The North American Post Office was under the control of the postmaster-general of Great Britain, who administered it through deputies of his own appointment. For purposes of administration the colonies were divided into two groups, known respectively as the northern and the southern districts of North America. The northern district, which extended from Acadia to the southern boundary of Virginia, was in the charge of two deputies of the postmaster-general, one of whom was Benjamin Franklin. In 1763 Franklin had been deputy postmaster-general for ten years, and had by his excellent management made the service, which until his time had yielded no surplus revenue, a source of considerable profit to the British Post Office. In his autobiography, in mentioning his removal from the position of deputy postmaster-general, he notes with much satisfaction that the posts under his charge were producing a revenue three times as great as that received from Ireland.

This, however, is not to say that at that period the Post Office was a popular institution, as the phrase is now used. The high postage rates made that impossible. The rates in North America, as well as in all other parts of the British Empire, were fixed by an act of parliament of 1710, and a

glance at those rates will show that even Franklin's genius would have been unequal to the task of popularizing an institution labouring under such a disadvantage.

The rate on a single letter from New York to Philadelphia was ninepence, and to Boston one shilling. A letter carried any distance under sixty miles was charged fourpence ; and, if the distance were between sixty and one hundred miles, the rate was sixpence. But the magnitude of the charges will not be perceived without an explanation of the term 'single letter.' It is important that this point be clearly understood, as letters were charged on this system for some years later than 1840. A single letter was defined as a single sheet of paper, weighing less than one ounce. Envelopes were not employed in those days, nor were they in general use in Canada until after 1850. The single sheet when ready for the post office was folded in such a way as to leave the outside blank, and on it the address was written. If within the folds of this sheet another sheet or scrap of paper were enclosed, although the enclosure were no larger than a postage stamp, its presence made the letter a double letter and doubled the postage on it. A second enclosure, however infinitesimal in size or weight, made the letter a triple letter and augmented the charges upon it accordingly. All this is on the supposition that the letter, with or without enclosures, weighed less than an ounce. If it contained three enclosures or weighed an ounce, the letter was subject to a charge equal to that on four single letters. Thus a letter from New York to Boston would be chargeable with 24 cents, 48 cents or 72 cents according as it contained no enclosures, or one or two enclosures, and provided it weighed less than an ounce. If there were three sheets or slips of paper in the letter, or if it weighed an ounce or more, the charge upon it would be 96 cents. The question will arise, how could it be ascertained that a letter contained one or more enclosures ? The device was elementary, and more or less efficacious. All letters suspected of containing enclosures were held up to the light of a candle, and their contents thus disclosed.

Franklin made no attempt to effect a reduction in the rates, but he quite appreciated the value of a good service,

and he was on the alert to improve in every way possible the arrangements of the system under his control. In 1763, as soon as the news of the Peace of Paris reached America, he set out for Canada, and having opened post offices at Montreal, Three Rivers and Quebec, he placed them all under the charge of Hugh Finlay, a young Scotsman who had come to Quebec in 1760, and who, on account of his knowledge of the French language, had been appointed to the delicate and responsible position of Justice of the Peace. The system in Canada was connected with that of the other colonies by a courier service between Montreal and New York. The courier travelled by way of Lake Champlain and the portage to the Hudson, and down that river. He made weekly trips, and they were so arranged that close connection was made at New York with the sailing packet, which left that port for Great Britain once a month. Canada had an advantage over some of the other colonies in carrying on a postal service. A carriage road along the north shore of the St Lawrence connected the three principal towns, and means had been provided by the French of travelling post over this road. Post-houses were set up at intervals of about nine miles and placed in charge of habitants, who had the horses and vehicles necessary to provide travellers with the means of conveyance from one post-house to another. This excellent system was continued by Sir Jeffrey Amherst, who, as soon as the colony was in his hands, gave the masters of the post-houses fresh commissions. Finlay, the colonial postmaster, engaged the masters of the post-houses to convey his couriers at the rate of sixpence a league. As the couriers were thus enabled to travel night and day, the Canadian section of the postal system of North America was covered very expeditiously.

A difficulty regarding the postal rates to be charged between Canada and the other parts of the system had to be met by an act of parliament. When the act of 1710 was passed, the extension of the service to the then French colony of Canada was, of course, not contemplated, and no provision had been made for postage for so great a distance. The act specified the rates from New York to the principal points

north and south, and then made a general provision that for distances up to sixty miles fourpence should be paid, and for greater distances up to one hundred miles sixpence. The application of these rates to the conveyance of letters from New York to Montreal and Quebec would have led to charges of two shillings and three shillings respectively for a single letter. Governors Murray of Quebec and Gage of Montreal represented that, while the people of Canada were in comfortable circumstances, they were nearly destitute of ready money, and that these high charges would prevent them from employing the post office at all. They were of opinion that it would be advantageous from every standpoint to have the limit of charge on any single letter passing between any two points in North America fixed at one shilling and sixpence. In accordance with these views the act of 1710 was amended in 1765, and while the rates for sixty and one hundred miles were left unchanged, a rate of twopence for every hundred miles beyond the first hundred was established. By this means the charges on a single letter from New York to Montreal and Quebec were reduced to one shilling and one shilling and fourpence respectively. Halifax, which had enjoyed the benefit of a post office since 1755, also shared, and in even greater measure, in the reduction, as the rates between any two seaports in America were fixed at fourpence. Under this scale the rate on a single letter passing between Montreal and Quebec was eightpence, and between either of these places and Three Rivers sixpence.

Progress after the American War

The conditions described were not changed to any material extent until the outbreak of the War of the Revolution in 1775. The capture of Fort Ticonderoga in May of that year, and the occupation of Montreal by the Americans a little later, severed the connection of Canada with the old colonial system, and the connection was not re-established until after the colonies had achieved their independence. The interruption of the service with New York left Canada in a state of great isolation while the war lasted. During the summer

an occasional vessel visiting Quebec enabled the Canadians to hear now and then what was happening in the world outside, but when the river was closed by ice the silence was complete. When the course of the war made it evident that the colonies were to gain their independence, the deputy postmaster-general looked into the practicability of obtaining access to the Atlantic at Halifax. An experimental trip was made by a Canadian courier in the beginning of 1784. It was not encouraging. The journey was perilous and difficult, and seven weeks were occupied from Quebec to Halifax. The courier from Montreal to New York did not take more than nine or ten days. The trip was also an expensive and unprofitable one. The courier's expenses amounted to £191, while the postage on the letters he carried did not quite reach £75.

In November 1783 the British Post Office restored the packet service between Falmouth in Cornwall and New York, and the merchants of Montreal and Quebec became clamorous for the reopening of the postal communication between Montreal and New York. After some delay the service was again established, but the unfriendliness of the Americans for the first few years compelled the deputy postmaster-general to see what could be done towards overcoming the natural disadvantages of the route to Halifax. The governor-general and the lieutenant-governor of Nova Scotia co-operated in the improvement of the lines of travel, and Lord Dorchester succeeded in inducing the Colonial Office to open a monthly communication by sailing packets between Falmouth and Halifax. This service began in the spring of 1788, and continued each year until the end of October. During the winter months the vessel ran to New York, as the Admiralty considered that the navigation along the Nova Scotia coast was very dangerous within that period. With the establishment of the mail route between Quebec and Halifax post offices were opened at Fredericton, Digby, Annapolis, Horton (now Wolfville) and Windsor. There had been a post office in Halifax since 1755, and one in St John since 1784.

In 1789, in consequence of petitions from the United

Empire Loyalists and disbanded soldiers who were settling in large numbers along the St Lawrence front and on the shores of Lake Ontario, post offices were established at Lachine, Cedars, Coteau du Lac, Charlottenburg, Cornwall, Lancaster, Osnabruck, Augusta, Elizabethtown (now Brockville) and Kingston. The only regular trips into this western country for the fifteen succeeding years were one trip by a courier on snow-shoes each winter. During the open season the people were not ill-accommodated, as the post office took advantage of the flat-boats and sailing vessels which ran on the river and lake. When York became the capital of the upper province it was in a state of complete isolation. On its eastern side there was scarcely a settlement nearer than those on the Bay of Quinte, which were over a hundred miles distant, and on the west there was a stretch of forty miles of Indian lands between York and the first white settlement at Hamilton. At first the only means of communication between York and the other settlements were the war-vessels. In 1801 the Danforth road was commenced between York and the Bay of Quinte, and the lieutenant-governor, General Hunter, applied for a regular postal service between York and the eastern settlements. George Heriot, the deputy postmaster-general who succeeded Hugh Finlay in the preceding year, warmly supported the application to the postmaster-general. He had been in Upper Canada, and was able to assure the postmaster-general that with the salubrity of the climate, the fertility of the soil, and the rapid influx of population, the province must become one of the first settlements in British America.

The reply of the British Post Office is illuminative of the attitude taken towards the colonial services as long as Francis Freeling was the secretary. Freeling was a man of great ability, but in his view the only aspect of a post office worth serious consideration was the financial one. If it did not return a profit to the treasury a post office was not to be considered. On receiving Heriot's report, Freeling, perceiving as he thought a disposition on Heriot's part to dwell unduly on the interests of the province, admonished him that in considering a proposition of that kind he must look to the

revenue to be expected from the route as well as to the convenience of the public. No scheme involving any sacrifice of the revenues was to be encouraged.

This attitude, from which the British Post Office did not swerve so long as Freeling's influence prevailed, made the situation of the deputy postmaster-general a very trying one. Settlements were springing up in all parts of the provinces, and there was a steady and often impatient demand for postal accommodation. The deputy was under strict injunctions to open no post office unless he was satisfied that it would yield enough to pay at least the expenses of the mail courier and postmaster. This was an impossible condition in the early days of many settlements. The groups of settlers were small, and they were situated a long distance from a post office, so that the revenue to be expected was at first often trifling, while the courier's wages were large. The view in the provinces was that, as some of the routes in the older districts were highly profitable, the surplus might fairly be devoted to extending the service into the new districts. This view found no favour with Freeling. Every route had to pay its own way and all surpluses were to be remitted to the treasury. A few years later, as will be seen, the provinces disputed the right of the postmaster-general to dispose of their revenues in this fashion, and gained a complete victory. While this policy prevailed, however, the deputy's position was one of great difficulty. He was exposed to the more or less authoritative solicitations of governors and legislative assemblies, and knowing the requirements of the country as he did, he was unable to put any moral force into his refusals. On some few occasions Heriot and his successor, Sutherland, yielded to the demands of the governor, but in each case a reprimand came from home, and an order to cancel the arrangements.

Lieutenant-Governor Hunter's application, coupled as it was with an engagement on his part to have any deficit made good from the provincial funds, was agreed to; the winter trips were increased from one to five, and the courier extended his journey as far as Niagara. Niagara had had a post office since 1789, but enjoyed no regular courier service before

1804. No regular service was given to Upper Canada during the summer months until 1810. In that year fortnightly couriers were established between Montreal and Kingston and maintained throughout the year, and in 1811 a similar service was given to York and Niagara. Occasional trips were made as far as Amherstburg. In 1815 weekly trips were begun between Montreal and Niagara, and a regular fortnightly service was placed on the route to Amherstburg.

In 1816 Heriot resigned in consequence of an altercation with Sir Gordon Drummond, the governor-general, arising out of the governor's peremptory demands for improvements, which it was out of the power of Heriot to effect. He was succeeded by Daniel Sutherland, who had been postmaster of Montreal. The outstanding features of Sutherland's administration, which continued until 1827, were the attention given in both Great Britain and Canada to the means of communication between Canada and the mother country, and the agitation in the House of Assembly in Upper Canada, which marked the beginning of the struggle for the control of the Post Office by the colonies.

The Over-sea Mail Service

The officially recognized mail service between Great Britain and her American colonies was that provided by the sailing packets, which, since 1788, had run between Falmouth and Halifax and New York. From Halifax the British mails for Bermuda were carried by war-vessels. This mode of conveyance was never popular in Canada, owing to the length of time occupied in carrying the mails between points in Canada and Halifax. As the inland service between New York and the Canadian border was steadily improved, nearly all the commercial and social correspondence between Great Britain and the Canadas was carried between English ports and New York. It came to be recognized that the packets were little more than the carriers of dispatches and official correspondence, and consequently the speed of the service was regarded as of little moment. Safety was the only consideration, and the government went to absurd lengths

to assure itself on this head. When the War of 1812 broke out Sir George Prevost persuaded the government to put the mails for Canada off the packet at Bermuda, and forward them to Halifax by a war-vessel. This was the winter arrangement until 1816. But even the governor's patience was exhausted by this time-disregarding scheme, and Lord Dalhousie made bitter complaint that his dispatches which left England in November did not reach Quebec until February, and his February dispatches lingered on their way until May.

Besides the packets there was another mode of conveyance across the Atlantic which was recognized by the Post Office. A person in England desiring to send his letters to America by a private vessel had only to indicate his wishes on the cover of the letter, and the British Post Office made up a mail by the vessel named. This was a much cheaper plan than the conveyance by packet, but there was a third mode which brought the expense of conveyance still lower. This was the mode universally employed, although it was without the sanction of the law. It had been the practice from the earliest colonial times for captains about to sail for New York, Boston, or other American ports, to give notice of the date of their departure and hang up a bag in one of the coffee-houses in London for the reception of letters for the ports to which they were bound. When the ship was ready to sail the bag was closed and taken on board, and on arrival in America the letters were either placed in the local post office for delivery or were handed to the persons to whom they were addressed. The charge for the ocean conveyance was a penny a letter. As there were no packet vessels at that period, no objection could be made to this arrangement for trans-atlantic conveyance, but the Post Office made an effort to bring the service under its control by requiring the captains to deliver their letter-bags at the nearest post office on reaching port. The postmaster receiving the bag paid the captain his usual fee of a penny a letter, and charged the owner of the letter a shilling for the ocean conveyance. There was a constant endeavour on the part of correspondents to evade the Post Office authorities by arrangements with friendly

captains, but there was a heavy penalty imposed on the captain who failed to deliver his letter-bag at the first post office available. After the Revolution had taken the old colonial posts out of the hands of the British Post Office, there was nothing to prevent captains leaving London or Liverpool for New York or Boston from carrying all the letters entrusted to their care and making their own charge for the service. This was precisely what happened, the captains taking twopence for each letter they brought to America. The letters were deposited in the post office at the port of arrival and forwarded to their destination charged with the inland postage. About 1820 a line of fast American vessels was placed on the route between Liverpool and New York, and these vessels carried practically all the letters of a commercial or social character passing between Great Britain and the Canadas. By this time there were excellent services between New York and towns on the Canadian borders, one to Swanton, Vermont, which was connected with Montreal, and the other to Lewiston or Buffalo on the Niagara frontier, by which Toronto was reached.

The charges for the conveyance by the last-mentioned arrangement were much lower than by the other services, but they were still very high. The postage on a single letter carried by packet from London to Quebec by way of Halifax was 92 cents ; to Montreal 96 cents ; to Kingston $1.04 ; to Toronto $1.12 ; and to Amherstburg, at the end of the postal system, $1.24. If the letter were sent by private ship, but in a mail made up by the post office, the charge was in each case 26 cents less. The rates on single letters sent by the American lines, without the intervention of the post office, were, from London to Quebec 47 cents ; to Montreal 31 cents ; to Kingston 47 cents ; to Toronto 41 cents ; and to Amherstburg 61 cents.

II

THE AGITATION FOR COLONIAL CONTROL

Freeling's Restrictive Policy

THE second important event during Sutherland's administration was the opening of the struggle on the part of Upper Canada for the control of the provincial Post Office. This was a matter of such serious consequence that it is necessary to set out at length the contentions of the legislature, and describe in detail the manner in which they were treated in Great Britain. Although the question was discussed as one of constitutional right, involving principles which were fought over in the War of the Revolution, it arose from considerations which were sufficiently practical. The province was receiving a large immigration, and settlements were springing up in many directions far from the beaten lines. It was imperative that the new districts should not be in effect beyond the reach of the law. There must be some means of bringing them into communication with the county court-house. The considerations were laid before the deputy postmaster-general, but, while recognizing the necessities of the case, he was prevented by his instructions from affording a remedy. Heriot had established a courier service through a line of settlements, and had left the receipts from the postage to pay the postmasters and courier. This was the best possible arrangement, and involved no loss to the revenue, but Freeling disliked the principle on which Heriot had acted, and the scheme was disavowed. Dr John Rolph, one of the reform leaders in the legislature, applied for a post office in the county of Middlesex, but he was obliged to guarantee the department against any loss arising from a deficiency of revenue before his application was granted. Sutherland opened two post offices at the pressing request of the governor-general, Sir John Sherbrooke; but the authority of the governor-general was not sufficient to shield him from the censure of the postmaster-general for acting in advance of official instructions.

The situation, then, was one of much difficulty. The postmaster-general laid it down as a principle that no post office could be opened until it could be shown to be capable of providing a revenue from its postages sufficient to cover the expenses of postmaster and mail courier. On the other hand, the new settlements were frequently so remote and so widely scattered that the cost of serving them could not be met from the anticipated revenues from the districts. The House of Assembly was compelled to take some steps to relieve the situation. It could, of course, have come to an arrangement with the deputy postmaster-general by which it would have undertaken to indemnify the Post Office against the losses which would be incurred by establishing many of the services. However, before taking a step so little to its liking as the representative of a self-governing province, the assembly set about ascertaining by what title the British Post Office assumed the exclusive power of establishing a postal system in the province, collecting the postage, and, so far as the house knew, appropriating the surplus revenue to its own use.

Before taking up this large question the house addressed itself to a preliminary matter in which its position was tolerably secure. There was good reason for believing that the rates of postage charged in the province were considerably higher than were warranted by the British statute fixing the rates. This statute, which was enacted in 1765 in amendment of the act of 1710, provided that the rates should be as follows: where the letter was carried less than 60 miles the postage was 4d. sterling, or 4½d. currency. The rate for conveyance between 60 and 100 miles was 7d. currency, and for every 100 miles beyond 2d. Its inquiries soon satisfied the house that the public were being taxed considerable sums on each letter beyond what the Post Office was entitled to charge. Thus the legal charge from Toronto to Dundas was 4½d.; the postmaster of Toronto charged 7d. To the offices from Grimsby eastward to Niagara Falls the legal rate was 7d.; the postmaster collected 10d. The distance from Toronto to Amherstburg, at the western end of the province, entitled the postmaster to a charge of

11d.; he took no less than 16d. for each letter passing between these places.

At the request of the house the lieutenant-governor, Sir Peregrine Maitland, laid the facts before the postmaster-general, with a request for the obvious remedy. The secretary of the Post Office, while admitting that the rates in Canada were fixed by the act of 1765, insisted that other circumstances had to be taken into the reckoning. He did not know whether the ordinary legal rates would produce revenue sufficient to cover expenses. If not, the engagement entered into by General Hunter in 1800 to meet any deficit from the provincial funds had to be considered. He would inquire of the deputy postmaster-general in Canada whether the revenue from the legal postage would be equal to the expense of the service, and, if it turned out that such was the case, there was no reason for requiring the province to grant aid.

This explanation did not accord with the facts. General Hunter's engagement was to indemnify the Post Office against loss, not by permitting illegal postage rates to be charged, but by a grant from the treasury. The impropriety of exceeding the legal charges was a point on which Freeling himself could insist when it suited his purpose to do so. In Sir Gordon Drummond's time the military authorities applied for a more frequent service between Kingston and Montreal, and offered to pay an increased postage rate, if such should be found necessary to meet the augmented expense. Freeling objected to such an offer, declaring that it could not be accepted unless the enhanced rates received the sanction of the British parliament. Other instances could be adduced which were equally inconsistent with Freeling's statement.

The Right of Postal Taxation

The House of Assembly did not wait for a reply to its remonstrance. It had already put aside the question whether the British Post Office should charge this rate or that rate. The question to which they now sought an answer was whether the British Post Office should charge any rate on letters posted in Upper Canada. Had the British Post Office any just title to set up a branch of its system and collect

postage in the province, or had its course been illegal from the beginning? The question was momentous. This was not, however, the first time it had been raised, and that, too, by men whose loyalty was beyond dispute. In 1791 Governor Simcoe, whose organizing genius elaborated a system of provincial government which was complete in the minutest detail, had proposed to unite the office of provincial postmaster with that of king's printer. But he regarded it as a matter of course, either that the postal system should be under the control of the legislature of Upper Canada, or that the British government would by express enactment retain the management of the system in its own hands, paying over any surplus revenue to the local government. The colonial secretary, to whom Simcoe addressed his observations, refused to decide the matter at the time, and indeed it might have remained merely an academic question for a long period if Freeling had not, by his niggardly policy, compelled the legislature to seek relief in some form.

In 1821 the House of Assembly appointed a committee to investigate the rights of the province with respect to the Post Office. Dr W. W. Baldwin, father of the celebrated Robert Baldwin, and himself a politician of note, was made chairman. The postmaster of York, the highest official of the Post Office within the jurisdiction of the legislature, was examined, but he contributed little information. He was, however, made to dispel a notion which was for some years circulated with some industry. It was at first hinted, and afterwards more boldly asserted, that the Post Office in Upper Canada was unable to pay its expenses from the postage it collected. The postmaster showed that there was no foundation for the statement. His own post office, after paying all the expenses of management and mail conveyance, showed a surplus of revenue amounting to from £800 to £900 a year. This profit was sent to the deputy postmaster-general at Quebec. The committee argued from this fact that the province as a whole produced a net revenue of more than £2000 a year. When asked how the deputy postmaster-general disposed of the sums sent to him as profit from the Post Office in Upper Canada, the postmaster could not say

with certainty, but he believed that the money eventually found its way into the British Treasury. At any rate, it was clear that this surplus revenue was in no way employed for the advantage of the province.

Taking it as settled that such was the disposition made of the surplus revenue, the committee turned its attention to the laws bearing on the subject. Their study of the statute left no doubt in the minds of the committee that, in appropriating to its own use the revenue from the colonial post offices, the General Post Office was acting illegally. In the view of the committee postal charges were taxes, differing from other taxes only in the mode of their collection. This is the view which the British government always held, although Benjamin Franklin, who as deputy postmaster-general expressed much pride in the amount he was able to remit to England as profit from the American Post Office, maintained that postal charges were not taxes, but simply payments for services which people might utilize or disregard as they chose. If people had been free to employ any other means at their disposal for the conveyance of their letters besides the Post Office, Franklin's contention might have prevailed. But, while the Post Office insisted on holding the exclusive right to carry letters, there can be no question that all sums collected by way of postage which were not required to pay the expenses of the service were in the nature of a tax.

The question then resolved itself into one as to the right of the British government to impose a tax on the colonies. The acts of the British parliament bearing on this point were those of 1778 and 1791. The act of 1778 was a belated attempt of the British government to check the rebellion which had arisen in the American colonies three years before. The act was described as designed to remove all doubts and apprehensions concerning taxation by the parliament of Great Britain in any of the colonies and plantations in North America and the West Indies. It declared that the king and parliament would not impose any duty, tax or assessment whatever, payable in the colonies in North America or the West Indies, unless it were found expedient to impose duties for the regulation of commerce. In this case, however, the

proceeds from such duties were not to be employed for the benefit of Great Britain, but were to form part of the revenue of the colony from which they were collected. This act seemed sufficiently comprehensive in its terms to include Canada, but that there might be no doubt as to its applicability to these provinces, it was expressly incorporated in the Constitutional Act of 1791, which was the charter under which the two provinces of Upper and Lower Canada were established. In considering these acts the committee was of opinion that the collection of postage could not be regarded as a regulation of commerce, and as such within the scope of the exception. But, even if it should be decided that it was wrong in this opinion, and that the British government had the power to set up a Post Office in Upper Canada, with the exclusive right to carry letters within the province, the committee held that it could not take the revenue from the Post Office and use it as part of the general revenue of Great Britain.

The committee then inquired as to what authority the postmaster-general of Great Britain relied upon for imposing postal charges in Canada and appropriating the proceeds to the uses of the mother country. The two statutes which seemed to the committee most likely to be taken by the postmaster-general as sanctioning his course in Canada were the acts of 1710 and 1801. The act of 1710 gave the postmaster-general power to establish a Post Office in the British colonies in America ; but it could not be used as regards Canada, because Canada, not being a British province, was not in contemplation when the statute was framed ; and even if it were held to apply to Canada since 1763, the act was repealed so far as concerned the power to collect postage by the acts of 1778 and 1791. The act of 1801 repealed all the rates of postage enacted by the act of 1710, and fixed new rates for Great Britain, but made no mention of new colonial rates. Hence, since 1801 there had been no colonial postage rates having the sanction of law, and the committee concluded that the omission of the colonial rates was not accidental, but intentional, in accordance with the terms of the acts of 1778 and 1791.

The committee admitted that the act of 1801 did not wholly repeal the act of 1710, but only such parts as related to the postage rates, and that it was matter for argument whether the unrepealed sections did not apply to Canada. If the whole argument on this point were conceded, however, the utmost that could be claimed was that the postmaster-general of Great Britain had the power to establish a postal system in Canada. The rates which he was empowered to charge by the act of 1710 were annulled by the act of 1801, which did not provide other rates. There were other acts passed by the imperial parliament touching the rates of postage, but they disclose no evidence of intention to make them operative in the colonies. There were rates established for letters circulating within the limits of Great Britain, and for letters passing to and from the colonies in America, but there were no rates fixed for letters circulating within the colonies. Their examination quite convinced the committee that the only acts which by any possibility might apply to the colonies were inoperative in the provinces of Canada.

The argument of the committee up to this point seemed fairly conclusive. It showed, in the first place, that the British government had relinquished any right it had to tax Canada ; and, in the second place, that even without that concession on the part of Great Britain, the only pretext on which the postmaster-general could rely to charge postage rates in Canada had been removed by a later statute. It then proceeded to show that, if the parliament of Great Britain had authorized the collection and appropriation by Great Britain of the postal revenues of Canada, it was acting at variance with the spirit which had governed all its relations with the colonies. Taxes were permissible for the regulation of commerce, but the proceeds belonged by right to the colonies from which they were drawn. No instance of a contrary intention could be found in any of the acts prior to 1778. There was an act passed in 1764 imposing duties on the sugar plantations. The revenues were devoted exclusively to the protection of the trade of the plantations. The Quebec Act of 1774 laid duties on the rum, brandy and other liquors coming into the province. On the same principle

the proceeds were to go to the establishment of a fund to aid in defraying the charges of the administration of justice and of the civil government in the province of Quebec. It was clear from this survey that the acts of 1778 and 1791 contained no new principle, but were simply declaratory of the steady policy of the British government.

As all these considerations combined to satisfy the committee that the legislature of the mother country never contemplated the raising of a tax by inland postage in Upper Canada, the committee concluded its labours by offering for the acceptance of the House of Assembly a resolution to the effect that the existing system of public posts for the conveyance of letters within the province had grown up without the sanction of law, and that a bill should be introduced establishing public posts and fixing the rates of postage on letters and packets for the purpose of raising a permanent revenue, applicable solely to the improvement of the roads throughout the province.

The report and resolution were adopted by the house, and forwarded to the colonial secretary by the lieutenant-governor, Sir Peregrine Maitland, who expressed a large measure of sympathy with the house. He believed that it was illegal to send colonial post office revenue to London, but was convinced that the house would not have troubled itself about this aspect of the question if the Post Office authorities had shown an inclination to provide an adequate service. When the report of the committee reached the postmaster-general he directed the solicitor for the Post Office to prepare a case for submission to the law-officers of the crown. But the case was not laid before the law-officers for their opinion at this time, nor for some years afterwards. The postmaster-general, who was less of a fanatic than the secretary of the Post Office, saw that success was very doubtful, and he refused to have legal opinion on the case as long as it could be postponed.

The agitation thus begun was not allowed to die down. In 1827 Lower Canada added its voice to that of the sister province. The House of Assembly in the lower province had an advantage in the fact that the deputy postmaster-

general resided within its jurisdiction. Session after session special committees were appointed to inquire into one or other of the several aspects of the question. T. A. Stayner, who in 1827 succeeded to the deputy postmaster-generalship, was, most unwillingly, the chief witness at these inquiries. Although his position and personal qualities secured for him a good deal of consideration, he aroused much irritation by his refusal to give any information touching the relations between himself and the postmaster-general in England, or the amount of the surplus revenue and the manner in which it was disposed of.

Newspaper Postage Irregularities

In 1831 the antagonism between the Canadian legislature and the Post Office authorities took on a new and more acute form. A publisher in Montreal complained to the postmaster-general that Stayner would not allow his newspapers to be distributed by the Post Office except at the rates charged for letters, which would have been quite prohibitive. One of the peculiarities of the postal law was that no provision was made for the transmission of any articles except letters. Other articles might be sent by post, but only if the same postage was paid on them as would have been charged on letters of the same size. The situation as regards newspapers was a difficult one. There was no means of delivering newspapers in most localities except through the Post Office, and yet neither publisher nor subscriber could afford to pay letter rates on such comparatively bulky articles. What was the remedy? The obvious one would have been to amend the postal law by inserting a clause fixing the rates on newspapers by post, but the government had an invincible objection to tampering with the Post Office Act, at least in this direction, and it adopted the characteristically illogical course of ignoring the conveyance of newspapers altogether.

Certain officials of the Post Office were given authority to frank newspapers for transmission by the posts, and these officials charged publishers and others a certain sum for exercising this power in their favour, and put the proceeds in their pockets. Among the officials on whom this valuable

privilege was conferred was the deputy postmaster-general in the colonies. In the early days of the English government in Canada the privilege was not greatly remunerative, but with the increase of population and the establishment of newspapers in the larger towns, the receipts from the newspaper perquisite rose into greater proportions, until at this time they were very much larger than the regular salary of the deputy postmaster-general. These facts were not known in Canada, but the publishers had observed with dissatisfaction that the charges for carrying newspapers had been steadily increasing for a quarter of a century, and so far as they could see there was no legal warrant either for the original charges or for the successive augmentations. In 1831 one of the publishers resolved to test the legality of the charges, and he refused to pay them, leaving it to the Post Office to collect the postage from his subscribers. It should be explained that, until after the penny postage was introduced in England, the habit was not as at present to prepay the postage, but to collect it on the delivery of the letter, and the practice of the Post Office in insisting that the charges on the conveyance of newspapers should be prepaid was entirely exceptional and was held to be a grievance by the publishers. On the refusal of the publisher to pay the postage, the postmaster of Montreal, on the instructions of the deputy postmaster-general, declined to transmit the papers by post, and an appeal was made to the postmaster-general. The reply from Freeling, the secretary, astonished the publisher, and, through him, the reading public in Canada. Without attempt at concealment the secretary informed the publisher that by ancient custom the conveyance of newspapers was the perquisite of the deputy postmaster-general, who fixed the charges and appropriated the proceeds without reference to the General Post Office.

This was just the information wanted to change the face of the dispute, throwing the merely constitutional aspects into the background and bringing the personal aspects into prominence. While the question was whether the Post Office in Canada should be controlled from home or locally, opinion was much divided. There were grievances arising from

the unwillingness of the General Post Office to extend the service to accommodate the new settlements, but a more liberal policy on the part of the postmaster-general would remove these, and with a loyal people there was a repugnance to push constitutional advantages too far. But here was a case which no person could defend. A precisely similar case had arisen in Great Britain a few years before. The secretary of the General Post Office, as well as other leading officials, had been enjoying large perquisites for the transmission of newspapers to the colonies and to the continent. The subject having been brought before the House of Commons, the practice was condemned unanimously and abolished.

Official Anxiety in England

The outcry in Canada against this abuse attracted the attention of the colonial secretary, who was watching the course of events with much anxiety, and he demanded an explanation of this additional and apparently needless source of discontent. The postmaster-general himself was dismayed at the agitation, and he determined to put an end to the uncertainty on the subject by referring the case to the law-officers of the crown. The answer of these officials, which was given on November 5, 1832, was unequivocally in favour of the contention of the colonies. The question, they stated, was of the highest political importance, involving the principle of the act of 1778 respecting the internal taxation of the colonies by the mother country. While there was perhaps room for argument as to the strict legal right under the statutes, the law-officers were of opinion that it would not be safe to agitate the question as one of law, and that if it were so discussed the British government could not succeed.

The government accepted this opinion as conclusive, and entered upon a consideration of the means by which the colonial views might be met without prejudice to certain imperial interests, which were regarded as highly important. It appeared to the government that the essential points in the colonial demands were that the provincial governments should have, each within its own jurisdiction, control of the postage rates and of the regulations for the service; that each

should have a statement laid before it periodically of the receipts and expenditures of the department; and that the surplus revenue, which had been remitted to England, should be at the disposal of the provincial governments. On its part the British government regarded it as necessary that it should continue to retain a general right of supervision over the arrangements of the colonial service as a whole. Only in this way could it be assured that its communications with its inland provinces would not be interrupted by the narrow self-interest of the colonies through which those communications had to pass. Correspondence between Upper Canada and the mother country sent by way of Halifax and the British packet service had to cross the territory of Nova Scotia, New Brunswick and Lower Canada. If one or more of these provinces either refused to maintain their portion of the through service, or charged unusually high postage rates for the conveyance across their territory, the communication between Great Britain and Upper Canada would have been greatly impeded, if not cut off altogether.

The British government feared that the sense of common interest among the several provinces would prove too slight to induce any of them to make sacrifices of its local interests, and it consulted the law-officers to see whether all necessary legislation for the establishment of the new arrangements might not be enacted by the imperial parliament. The law-officers answered in the negative, believing that the imperial parliament was not competent to pass legislation imposing postal charges on the colonies. The course they advised and which was eventually adopted was to have an act passed by the imperial parliament formally repealing the acts by virtue of which the postage was being collected in the provinces, and disclaiming the right it had exercised to appropriate the surplus revenue from the colonies for imperial purposes. At the same time a Colonial Post Office bill was to be drawn up and offered for the acceptance of the legislatures of each of the colonies. The imperial act was not to come into force until the colonial act was adopted by all the provincial legislatures.

The imperial act was passed on March 26, 1834, and the

draft of the colonial bill was submitted to each of the provincial legislatures for their adoption. This bill gave the control and management of the Post Office within all the provinces to the postmaster-general of England, who would appoint a deputy in each of the provinces. The rates of postage on letters and all other classes of correspondence were fixed by the bill, and it was provided that, on correspondence passing from one province to another, there should be only one charge, which should be according to the whole distance the articles were carried. The postage on letters by the proposed bill was twopence a letter higher than the rates then in force, except where the letters were carried very short distances.

Stayner's Emoluments

While matters were progressing in this fashion in Great Britain the colonies continued their agitation without abatement. The opinion of the law-officers was not communicated to the legislatures, and they were unaware of any change in the attitude of the imperial government until the passing of the act in 1834. The petitions of the legislatures did not differ markedly in character until 1835, but they were making steady headway. The governors were by this time heartily espousing the cause of the assemblies, and Stayner, the deputy postmaster-general, while preserving an unchanged front in Canada, was urging the postmaster-general to have the establishment put on a less equivocal footing, although he was unwilling to have the amount of his emoluments reduced. So long as the question was not raised with too much vigour in Canada the postmaster-general had not concerned himself with the amount which Stayner received from newspaper postages, and from his commissions as agent for the collection of United States postage ; but it was necessary to see what foundations there were for the agitation, and Stayner was asked for a statement. The postmaster-general must have been astounded at the magnitude of his income. For the years 1830, 1831 and 1832 the income from the Canadian business averaged £1955 sterling, and from the United States commissions he received over £400 additional. The Post

Office Board, however, was of the opinion that Stayner was so valuable a man that his income was not so disproportionate as to call for its interference. It considered that he had done more than could have been expected of any man, in view of the difficulties he had to contend with.

This was not the view held in Canada when the facts became known. The first information as to the magnitude of Stayner's emoluments came from returns furnished to the British House of Commons in response to inquiries on the part of Joseph Hume. The newspapers at once gave tongue, and Stayner was ill-advised enough to essay a defence. The plan by which newspapers were carried at less than the rates on letters was declared to be purely for the benefit of the publishers. That the proceeds all found their way into his pocket was a matter between himself and his master, the postmaster-general. The arrangement with the United States authorities, by which he took 20 per cent of all United States postages collected in Canada, he insisted was a private affair with which the public had nothing to do. It should be explained that the transactions here alluded to arose from the fact that on all letters passing between Canada and the United States the total postage was divided between the two countries. Letters coming into Canada from the United States were subject to the postage from the place of posting to the Canadian boundary-line, and also to the postage from the boundary-line to the place of destination. The former postage belonged to the United States and the latter to Canada. Where, as commonly happened, the postage was not paid at all until the letter reached the person to whom it was addressed, the United States portion was remitted to the United States, less a discount of 20 per cent, which was allowed to the deputy postmaster-general for the trouble of collecting and remitting. The newspapers, which criticized the methods by which Stayner's emoluments were accumulated, had no difficulty in showing that the receipts from both these sources belonged not to the deputy postmaster-general, but to the department.

But it was not till 1835 that the season of Stayner's discomfort fairly set in. In that year the assemblies of both

Upper and Lower Canada demanded all the information which their ingenuity could suggest as likely to bear on the policy they proposed to adopt regarding the Post Office. They had before them the draft act prepared by the imperial government in 1834, but its defects were so manifest that it was set aside, and each assembly tried its hand on a Post Office act of its own. Stayner was no longer permitted to withhold any information sought by either legislature, as the postmaster-general was as anxious as any one could be to remove the Post Office from the invidious position it had so long occupied. The work which fell on Stayner in the preparation of the returns asked for was enormous. The house of Lower Canada obtained returns to the number of 119, filling more than 235 foolscap pages of the house Report of 1835-36. The clerical work, however, burdensome as it was, proved less vexatious than the worrying to which Stayner was subjected at the hands of the house committees.

The inquiry in Lower Canada opened with the evidence of William Lyon Mackenzie, who was in Quebec consulting with the reform leaders of Lower Canada. In the course of a general arraignment of the Post Office he mentioned some curious facts. The agitation which had sprung up among the newspaper publishers when they learned that Stayner put in his own pocket the amounts extracted from them for the conveyance of their papers had made Stayner very sensitive to criticism. If a publisher became contumacious and refused to pay the usual charges, Stayner seldom refused a composition, on the principle that the half-loaf is better than none. While in England Mackenzie had an opportunity of seeing the statements prepared by Stayner in response to the demand of Joseph Hume, and observed that some of the papers with the largest circulation paid but a moderate postage bill. The practice of the publishers was to make returns of their postings at figures much less than the actual circulation. Thus the Montreal *Gazette*, with a circulation through the Post Office of nearly two thousand copies, gave 250 as the number of papers so sent, and the transparent fiction was accepted. On his return to Toronto Mackenzie adopted the same practice in connection with

his own paper, the *Colonial Advocate*, and in order that no charge of deception might lie at his door he published the fact in the paper. Stayner in this case was driven to make a demand for the whole postage due, but on Mackenzie showing fight the claim was allowed to drop.

After Mackenzie Stayner was examined at great length. He was taken over the whole range of Post Office transactions, and under the skilful questioning of Dr O'Callaghan and his associates, who in the course of committee work had become familiar with the operations of the Post Office, he was made to disclose all those facts which he had hitherto withheld respecting the surplus revenue transmitted to Great Britain, and, more disagreeable still, those relating to the sums he had appropriated for his own benefit. He attempted a defence of his course in taking to himself the full newspaper postage by declaring that he had all the responsibility for the transmission of newspapers, and that he had no reason to think that there was any expense incurred by the sending of newspapers, as they were carried in the same sacks as the letters, the postage on which defrayed the expense of the service. By way of meeting this improbable statement the committee called the contractor for the carrying of the mails between Quebec and Montreal, who expressed his willingness to reduce his charge by £200 a year if he were relieved of the newspapers.

The committee, in its report to the house, animadverted with much severity on the illegal course of the deputy postmaster-general in remitting to London the profits from the letter postage in Canada, and in putting into his own pocket the proceeds from the newspaper postage ; on his failure to meet the requirements, which he fully recognized, of settlements in all parts of the province for postal accommodation ; and on his pertinacious refusal to impart any information to the committees of the house relative to the finances of the department and the amount of his emoluments. During the three years ended 1834 the profits from the Canadian Post Office amounted to £32,314, all of which was placed at the disposal of the British Treasury. Stayner's gains from the newspaper postage for the same three years totalled the handsome sum of £6404. The magnitude and source of

Stayner's emoluments excited great indignation. For the three years his income from the Post Office amounted to £3185, 5s. 2d. per annum, a sum described by the committee as nearly equal to that allowed to the governor-general, three times more than the salary of any puisne judge in the province, almost equal to the whole amount paid to all the postmasters in Upper Canada, and a third more than the allowance received by the postmasters in Lower Canada. As evidence of the needs of the country in the way of postal accommodation, the committee had before it a letter written in 1835 by Stayner himself to the postmaster-general, informing him that the number of post offices, which in 1834 was 254, should at once be raised to 500. In this letter, which is a plea for more assistance, Stayner says :

> I am within bounds in saying that at this moment, there are from two to three hundred distinct societies of people spread over the country, in Upper Canada alone, who are suffering for want of that accommodation, which I would fain give them, had I the power of doing it. This is a cruel state of things, and the more to be lamented because I believe that the demands of those people could be supplied (to a reasonable extent, at all events) without burdening the Post Office revenue. By this I mean that so active is the spirit of enterprise amongst that class of persons, who are now crowding into the new settlements throughout the whole extent of Upper Canada, as well as in many parts of the Lower Province, and so great is their disposition for letter writing that in a short time the increased revenue would liberally repay the outlay demanded.

Reports favouring Provincial Control

The committee recommended that a provincial postal system be established in Lower Canada. In Upper Canada the same set of facts aroused a similar state of feeling in the legislature, and there was also a demand for a local postal system under the control of the provincial government.

When the proceedings of the Canadian legislatures reached Great Britain, they attracted the immediate attention

of the colonial secretary, Lord Glenelg. He communicated with the postmaster-general, expressing the opinion that Stayner's emoluments were entirely excessive and levied upon an objectionable principle, and he begged the postmaster-general to put an end at once to the newspaper perquisites. Lord Glenelg, in conclusion, impressed on the postmaster-general the anxiety of His Majesty's government that no time should be lost in removing any real grievances which might be shown to exist in the administration of the public offices in Canada. The postmaster-general realized the serious nature of the situation, but professed his inability to provide a remedy while the provincial legislature refused to accept the bill drafted for the administration of the colonial post offices.

The case was placed in the hands of Lord Durham. In his celebrated report on the state of affairs in the Canadas Lord Durham gave it as his opinion that there was great justice in the complaints of the legislatures, and he recommended strongly, that if any plan of the united government of the provinces should be adopted, the control of the Post Office should be given to the colony.

When Mr Poulett Thomson (afterwards Lord Sydenham) came to Canada in 1839 with instructions to give effect to the policy enunciated by Lord Durham, he took the administration of the Post Office into his hands. He expressed to Stayner his intention to put the institution on a footing satisfactory to the public. He directed Stayner to draw up a Post Office bill upon principles to be laid down by the governor, and appointed a commission to inquire into and report on all the various features of the Post Office in the colonies. The commission was composed of Edward Dowling, legal adviser of the governor-general, Stayner, the deputy postmaster-general, and John Davidson, senior commissioner of crown lands. The commissioners, who received their instructions in October 1840, entered upon their duties with much earnestness, and they collected a vast amount of information bearing on the condition of the Post Office in the several provinces and in Newfoundland. As their report was not presented until the last day of 1841, after the death

of Lord Sydenham, and as it was the foundation of the reorganization of the department, which took place after the union of the Canadas, a consideration of the report is postponed to the chapter dealing with the Post Office during the period between the Union and Confederation.

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